

AMENDED IN SENATE AUGUST 5, 2014

AMENDED IN SENATE JUNE 18, 2014

AMENDED IN ASSEMBLY MAY 7, 2014

AMENDED IN ASSEMBLY MARCH 28, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2632

Introduced by Assembly Member Maienschein
(Coauthors: Assembly Members Melendez, Quirk-Silva, and
Wieckowski)
(Coauthor: Senator Gaines)

February 21, 2014

An act to amend Sections 1522, 1568.09, 1569.17, and ~~1596.871~~,
1596.871 of the Health and Safety Code, relating to care facilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 2632, as amended, Maienschein. Care facilities.

Under existing law, the State Department of Social Services licenses and regulates, among other things, community care facilities, foster family home or certified family home, residential care facilities for persons with a chronic, life-threatening illness, residential care facilities for the elderly, and child day cares. Existing law requires the department, prior to issuing a license or special permit to operate any of those facilities, to secure from an appropriate law enforcement agency a criminal record to determine whether the applicant or any other person, as specified, has been convicted of a crime other than a minor traffic violation, or arrested for certain crimes, or for any crime for which the department cannot grant an exemption if the person was convicted and

the person has not been exonerated. Existing law requires an individual to obtain either a criminal record clearance or a criminal record exemption from the department prior to his or her employment, residence, or initial presence in those facilities listed above. Existing law prohibits the department from using a record of arrest to deny, revoke, or terminate any application, license, employment, or residence unless the department investigates the incident and secures evidence that is admissible in an administrative hearing to establish conduct by the person that may pose a risk to the health and safety of any person who is or may become a client.

This bill would prohibit the department, with regard to those facilities, from issuing a criminal record clearance to a person who has *violated or who has* been arrested for specified crimes or for any crime for which the department is prohibited from granting a criminal record exemption prior to the department's completion of an investigation of the incident to establish conduct by the person that may pose a risk to the health and safety of any person who is or may become a client. ~~This~~ *The* bill would also require the department, subsequent to licensing but prior to a person's employment, residence, or initial presence in a specified facility, to secure from an appropriate law enforcement agency a criminal record to determine whether a person not exempt from fingerprinting or other person, as specified, has been convicted of a crime other than a minor traffic violation, arrested for certain crimes, or for any crime for which the department cannot grant an exemption.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 1522 of the Health and Safety Code is~~
2 ~~amended to read:~~
3 ~~1522. The Legislature recognizes the need to generate timely~~
4 ~~and accurate positive fingerprint identification of applicants as a~~
5 ~~condition of issuing licenses, permits, or certificates of approval~~
6 ~~for persons to operate or provide direct care services in a~~
7 ~~community care facility, foster family home, or a certified family~~
8 ~~home of a licensed foster family agency. Therefore, the Legislature~~
9 ~~supports the use of the fingerprint live-scan technology, as~~
10 ~~identified in the long-range plan of the Department of Justice for~~
11 ~~fully automating the processing of fingerprints and other data by~~

1 the year 1999, otherwise known as the California Crime
2 Information Intelligence System (CAL-CII), to be used for
3 applicant fingerprints. It is the intent of the Legislature in enacting
4 this section to require the fingerprints of those individuals whose
5 contact with community care clients may pose a risk to the clients'
6 health and safety. An individual shall be required to obtain either
7 a criminal record clearance or a criminal record exemption from
8 the State Department of Social Services before his or her initial
9 presence in a community care facility.

10 (a) (1) Before and, as applicable, subsequent to issuing a license
11 or special permit to any person or persons to operate or manage a
12 community care facility, the State Department of Social Services
13 shall secure from an appropriate law enforcement agency a criminal
14 record to determine whether the applicant or any other person
15 specified in subdivision (b) has ever been convicted of a crime
16 other than a minor traffic violation or arrested for any crime
17 specified in Section 290 of the Penal Code, or for violating Section
18 245 or 273.5, of the Penal Code, subdivision (b) of Section 273a
19 of the Penal Code, or, prior to January 1, 1994, paragraph (2) of
20 Section 273a of the Penal Code, or for any crime for which the
21 department is prohibited from granting a criminal record exemption
22 pursuant to subdivision (g).

23 (2) The criminal history information shall include the full
24 criminal record, if any, of those persons, and subsequent arrest
25 information pursuant to Section 11105.2 of the Penal Code.

26 (3) Except during the 2003-04 to the 2014-15 fiscal years,
27 inclusive, neither the Department of Justice nor the State
28 Department of Social Services may charge a fee for the
29 fingerprinting of an applicant for a license or special permit to
30 operate a facility providing nonmedical board, room, and care for
31 six or less children or for obtaining a criminal record of the
32 applicant pursuant to this section.

33 (4) The following shall apply to the criminal record information:

34 (A) If the State Department of Social Services finds that the
35 applicant, or any other person specified in subdivision (b), has
36 been convicted of a crime other than a minor traffic violation, the
37 application shall be denied, unless the director grants an exemption
38 pursuant to subdivision (g).

39 (B) If the State Department of Social Services finds that the
40 applicant, or any other person specified in subdivision (b), is

1 awaiting trial for a crime other than a minor traffic violation, the
2 State Department of Social Services may cease processing the
3 criminal record information until the conclusion of the trial.

4 (C) If no criminal record information has been recorded, the
5 Department of Justice shall provide the applicant and the State
6 Department of Social Services with a statement of that fact.

7 (D) If the State Department of Social Services finds after
8 licensure that the licensee, or any other person specified in
9 paragraph (1) of subdivision (b), has been convicted of a crime
10 other than a minor traffic violation, the license may be revoked;
11 unless the director grants an exemption pursuant to subdivision
12 (g).

13 (E) An applicant and any other person specified in subdivision
14 (b) shall submit fingerprint images and related information to the
15 Department of Justice for the purpose of searching the criminal
16 records of the Federal Bureau of Investigation, in addition to the
17 criminal records search required by this subdivision. If an applicant
18 and all other persons described in subdivision (b) meet all of the
19 conditions for licensure, except receipt of the Federal Bureau of
20 Investigation's criminal offender record information search
21 response for the applicant or any of the persons described in
22 subdivision (b), the department may issue a license if the applicant
23 and each person described in subdivision (b) has signed and
24 submitted a statement that he or she has never been convicted of
25 a crime in the United States, other than a traffic infraction, as
26 prescribed in paragraph (1) of subdivision (a) of Section 42001 of
27 the Vehicle Code. If, after licensure, the department determines
28 that the licensee or any other person specified in subdivision (b)
29 has a criminal record, the license may be revoked pursuant to
30 Section 1550. The department may also suspend the license
31 pending an administrative hearing pursuant to Section 1550.5.

32 (F) The State Department of Social Services shall develop
33 procedures to provide the individual's state and federal criminal
34 history information with the written notification of his or her
35 exemption denial or revocation based on the criminal record.
36 Receipt of the criminal history information shall be optional on
37 the part of the individual, as set forth in the agency's procedures.
38 The procedure shall protect the confidentiality and privacy of the
39 individual's record, and the criminal history information shall not
40 be made available to the employer.

1 ~~(G) Notwithstanding any other law, the department is authorized~~
2 ~~to provide an individual with a copy of his or her state or federal~~
3 ~~level criminal offender record information search response as~~
4 ~~provided to that department by the Department of Justice if the~~
5 ~~department has denied a criminal background clearance based on~~
6 ~~this information and the individual makes a written request to the~~
7 ~~department for a copy specifying an address to which it is to be~~
8 ~~sent. The state or federal level criminal offender record information~~
9 ~~search response shall not be modified or altered from its form or~~
10 ~~content as provided by the Department of Justice and shall be~~
11 ~~provided to the address specified by the individual in his or her~~
12 ~~written request. The department shall retain a copy of the~~
13 ~~individual's written request and the response and date provided.~~

14 ~~(b) (1) In addition to the applicant, this section shall be~~
15 ~~applicable to criminal record clearances and exemptions for the~~
16 ~~following persons:~~

17 ~~(A) Adults responsible for administration or direct supervision~~
18 ~~of staff.~~

19 ~~(B) Any person, other than a client, residing in the facility.~~

20 ~~(C) Any person who provides client assistance in dressing,~~
21 ~~grooming, bathing, or personal hygiene. Any nurse assistant or~~
22 ~~home health aide meeting the requirements of Section 1338.5 or~~
23 ~~1736.6, respectively, who is not employed, retained, or contracted~~
24 ~~by the licensee, and who has been certified or recertified on or~~
25 ~~after July 1, 1998, shall be deemed to meet the criminal record~~
26 ~~clearance requirements of this section. A certified nurse assistant~~
27 ~~and certified home health aide who will be providing client~~
28 ~~assistance and who falls under this exemption shall provide one~~
29 ~~copy of his or her current certification, prior to providing care, to~~
30 ~~the community care facility. The facility shall maintain the copy~~
31 ~~of the certification on file as long as care is being provided by the~~
32 ~~certified nurse assistant or certified home health aide at the facility.~~
33 ~~Nothing in this paragraph restricts the right of the department to~~
34 ~~exclude a certified nurse assistant or certified home health aide~~
35 ~~from a licensed community care facility pursuant to Section 1558.~~

36 ~~(D) Any staff person, volunteer, or employee who has contact~~
37 ~~with the clients.~~

38 ~~(E) If the applicant is a firm, partnership, association, or~~
39 ~~corporation, the chief executive officer or other person serving in~~
40 ~~like capacity.~~

~~(F) Additional officers of the governing body of the applicant, or other persons with a financial interest in the applicant, as determined necessary by the department by regulation. The criteria used in the development of these regulations shall be based on the person's capability to exercise substantial influence over the operation of the facility.~~

~~(2) The following persons are exempt from the requirements applicable under paragraph (1):~~

~~(A) A medical professional as defined in department regulations who holds a valid license or certification from the person's governing California medical care regulatory entity and who is not employed, retained, or contracted by the licensee if all of the following apply:~~

~~(i) The criminal record of the person has been cleared as a condition of licensure or certification by the person's governing California medical care regulatory entity.~~

~~(ii) The person is providing time-limited specialized clinical care or services.~~

~~(iii) The person is providing care or services within the person's scope of practice.~~

~~(iv) The person is not a community care facility licensee or an employee of the facility.~~

~~(B) A third-party repair person or similar retained contractor if all of the following apply:~~

~~(i) The person is hired for a defined, time-limited job.~~

~~(ii) The person is not left alone with clients.~~

~~(iii) When clients are present in the room in which the repair person or contractor is working, a staff person who has a criminal record clearance or exemption is also present.~~

~~(C) Employees of a licensed home health agency and other members of licensed hospice interdisciplinary teams who have a contract with a client or resident of the facility and are in the facility at the request of that client or resident's legal decisionmaker. The exemption does not apply to a person who is a community care facility licensee or an employee of the facility.~~

~~(D) Clergy and other spiritual caregivers who are performing services in common areas of the community care facility or who are advising an individual client at the request of, or with the permission of, the client or legal decisionmaker, are exempt from fingerprint and criminal background check requirements imposed~~

1 by community care licensing. This exemption does not apply to a
2 person who is a community care licensee or employee of the
3 facility.

4 (E) Members of fraternal, service, or similar organizations who
5 conduct group activities for clients if all of the following apply:

- 6 (i) Members are not left alone with clients.
7 (ii) Members do not transport clients off the facility premises.
8 (iii) The same organization does not conduct group activities
9 for clients more often than defined by the department's regulations.

10 (3) In addition to the exemptions in paragraph (2), the following
11 persons in foster family homes, certified family homes, and small
12 family homes are exempt from the requirements applicable under
13 paragraph (1):

14 (A) Adult friends and family of the licensed or certified foster
15 parent, who come into the home to visit for a length of time no
16 longer than defined by the department in regulations, provided
17 that the adult friends and family of the licensee are not left alone
18 with the foster children. However, the licensee, acting as a
19 reasonable and prudent parent, as defined in paragraph (2) of
20 subdivision (a) of Section 362.04 of the Welfare and Institutions
21 Code, may allow his or her adult friends and family to provide
22 short-term care to the foster child and act as an appropriate
23 occasional short-term babysitter for the child.

24 (B) Parents of a foster child's friend when the foster child is
25 visiting the friend's home and the friend, licensed or certified foster
26 parent, or both are also present. However, the licensee, acting as
27 a reasonable and prudent parent, may allow the parent of the foster
28 child's friend to act as an appropriate short-term babysitter for the
29 child without the friend being present.

30 (C) Individuals who are engaged by any licensed or certified
31 foster parent to provide short-term care to the child for periods not
32 to exceed 24 hours. Caregivers shall use a reasonable and prudent
33 parent standard in selecting appropriate individuals to act as
34 appropriate occasional short-term babysitters.

35 (4) In addition to the exemptions specified in paragraph (2), the
36 following persons in adult day care and adult day support centers
37 are exempt from the requirements applicable under paragraph (1):

38 (A) Unless contraindicated by the client's individualized
39 program plan (IPP) or needs and service plan, a spouse, significant
40 other, relative, or close friend of a client, or an attendant or a

1 ~~facilitator for a client with a developmental disability if the~~
2 ~~attendant or facilitator is not employed, retained, or contracted by~~
3 ~~the licensee. This exemption applies only if the person is visiting~~
4 ~~the client or providing direct care and supervision to the client.~~

5 ~~(B) A volunteer if all of the following applies:~~

6 ~~(i) The volunteer is supervised by the licensee or a facility~~
7 ~~employee with a criminal record clearance or exemption.~~

8 ~~(ii) The volunteer is never left alone with clients.~~

9 ~~(iii) The volunteer does not provide any client assistance with~~
10 ~~dressing, grooming, bathing, or personal hygiene other than~~
11 ~~washing of hands.~~

12 ~~(5) (A) In addition to the exemptions specified in paragraph~~
13 ~~(2), the following persons in adult residential and social~~
14 ~~rehabilitation facilities, unless contraindicated by the client's~~
15 ~~individualized program plan (IPP) or needs and services plan, are~~
16 ~~exempt from the requirements applicable under paragraph (1): a~~
17 ~~spouse, significant other, relative, or close friend of a client, or an~~
18 ~~attendant or a facilitator for a client with a developmental disability~~
19 ~~if the attendant or facilitator is not employed, retained, or~~
20 ~~contracted by the licensee. This exemption applies only if the~~
21 ~~person is visiting the client or providing direct care and supervision~~
22 ~~to that client.~~

23 ~~(B) Nothing in this subdivision shall prevent a licensee from~~
24 ~~requiring a criminal record clearance of any individual exempt~~
25 ~~from the requirements of this section, provided that the individual~~
26 ~~has client contact.~~

27 ~~(6) Any person similar to those described in this subdivision,~~
28 ~~as defined by the department in regulations.~~

29 ~~(e) (1) Subsequent to initial licensure, a person specified in~~
30 ~~subdivision (b) who is not exempted from fingerprinting shall~~
31 ~~obtain either a criminal record clearance or an exemption from~~
32 ~~disqualification pursuant to subdivision (g) from the State~~
33 ~~Department of Social Services prior to employment, residence, or~~
34 ~~initial presence in the facility. A person specified in subdivision~~
35 ~~(b) who is not exempt from fingerprinting shall be fingerprinted~~
36 ~~and shall sign a declaration under penalty of perjury regarding any~~
37 ~~prior criminal convictions. The licensee shall submit fingerprint~~
38 ~~images and related information to the Department of Justice and~~
39 ~~the Federal Bureau of Investigation, through the Department of~~
40 ~~Justice, for a state and federal level criminal offender record~~

1 information search, or comply with paragraph (1) of subdivision
2 (h). These fingerprint images and related information shall be sent
3 by electronic transmission in a manner approved by the State
4 Department of Social Services and the Department of Justice for
5 the purpose of obtaining a permanent set of fingerprints, and shall
6 be submitted to the Department of Justice by the licensee. A
7 licensee's failure to prohibit the employment, residence, or initial
8 presence of a person specified in subdivision (b) who is not exempt
9 from fingerprinting and who has not received either a criminal
10 record clearance or an exemption from disqualification pursuant
11 to subdivision (g) or to comply with paragraph (1) of subdivision
12 (h), as required in this section, shall result in the citation of a
13 deficiency and the immediate assessment of civil penalties in the
14 amount of one hundred dollars (\$100) per violation per day for a
15 maximum of five days, unless the violation is a second or
16 subsequent violation within a 12-month period in which case the
17 civil penalties shall be in the amount of one hundred dollars (\$100)
18 per violation for a maximum of 30 days, and shall be grounds for
19 disciplining the licensee pursuant to Section 1550. The department
20 may assess civil penalties for continued violations as permitted by
21 Section 1548. The fingerprint images and related information shall
22 then be submitted to the Department of Justice for processing.
23 Upon request of the licensee, who shall enclose a self-addressed
24 stamped postcard for this purpose, the Department of Justice shall
25 verify receipt of the fingerprints.

26 (2) Within 14 calendar days of the receipt of the fingerprint
27 images, the Department of Justice shall notify the State Department
28 of Social Services of the criminal record information, as provided
29 for in subdivision (a). If no criminal record information has been
30 recorded, the Department of Justice shall provide the licensee and
31 the State Department of Social Services with a statement of that
32 fact within 14 calendar days of receipt of the fingerprint images.
33 Documentation of the individual's clearance or exemption from
34 disqualification shall be maintained by the licensee and be available
35 for inspection. If new fingerprint images are required for
36 processing, the Department of Justice shall, within 14 calendar
37 days from the date of receipt of the fingerprints, notify the licensee
38 that the fingerprints were illegible, the Department of Justice shall
39 notify the State Department of Social Services, as required by
40 Section 1522.04, and shall also notify the licensee by mail, within

1 ~~14 days of electronic transmission of the fingerprints to the~~
2 ~~Department of Justice, if the person has no criminal history~~
3 ~~recorded. A violation of the regulations adopted pursuant to Section~~
4 ~~1522.04 shall result in the citation of a deficiency and an immediate~~
5 ~~assessment of civil penalties in the amount of one hundred dollars~~
6 ~~(\$100) per violation per day for a maximum of five days, unless~~
7 ~~the violation is a second or subsequent violation within a 12-month~~
8 ~~period in which case the civil penalties shall be in the amount of~~
9 ~~one hundred dollars (\$100) per violation for a maximum of 30~~
10 ~~days, and shall be grounds for disciplining the licensee pursuant~~
11 ~~to Section 1550. The department may assess civil penalties for~~
12 ~~continued violations as permitted by Section 1548.~~

13 ~~(3) Except for persons specified in subdivision (b) who are~~
14 ~~exempt from fingerprinting, the licensee shall endeavor to ascertain~~
15 ~~the previous employment history of persons required to be~~
16 ~~fingerprinted. If it is determined by the State Department of Social~~
17 ~~Services, on the basis of the fingerprint images and related~~
18 ~~information submitted to the Department of Justice, that subsequent~~
19 ~~to obtaining a criminal record clearance or exemption from~~
20 ~~disqualification pursuant to subdivision (g), the person has been~~
21 ~~convicted of, or is awaiting trial for, a sex offense against a minor,~~
22 ~~or has been convicted for an offense specified in Section 243.4,~~
23 ~~273a, 273d, 273g, or 368 of the Penal Code, or a felony, the State~~
24 ~~Department of Social Services shall notify the licensee to act~~
25 ~~immediately to terminate the person's employment, remove the~~
26 ~~person from the community care facility, or bar the person from~~
27 ~~entering the community care facility. The State Department of~~
28 ~~Social Services may subsequently grant an exemption from~~
29 ~~disqualification pursuant to subdivision (g). If the conviction or~~
30 ~~arrest was for another crime, except a minor traffic violation, the~~
31 ~~licensee shall, upon notification by the State Department of Social~~
32 ~~Services, act immediately to either (A) terminate the person's~~
33 ~~employment, remove the person from the community care facility,~~
34 ~~or bar the person from entering the community care facility; or~~
35 ~~(B) seek an exemption from disqualification pursuant to subdivision~~
36 ~~(g). The State Department of Social Services shall determine if~~
37 ~~the person shall be allowed to remain in the facility until a decision~~
38 ~~on the exemption from disqualification is rendered. A licensee's~~
39 ~~failure to comply with the department's prohibition of employment,~~
40 ~~contact with clients, or presence in the facility as required by this~~

1 paragraph shall result in a citation of deficiency and an immediate
2 assessment of civil penalties in the amount of one hundred dollars
3 (\$100) per violation per day and shall be grounds for disciplining
4 the licensee pursuant to Section 1550.

5 (4) The department may issue an exemption from
6 disqualification on its own motion pursuant to subdivision (g) if
7 the person's criminal history indicates that the person is of good
8 character based on the age, seriousness, and frequency of the
9 conviction or convictions. The department, in consultation with
10 interested parties, shall develop regulations to establish the criteria
11 to grant an exemption from disqualification pursuant to this
12 paragraph.

13 (5) Concurrently with notifying the licensee pursuant to
14 paragraph (3), the department shall notify the affected individual
15 of his or her right to seek an exemption from disqualification
16 pursuant to subdivision (g). The individual may seek an exemption
17 from disqualification only if the licensee terminates the person's
18 employment or removes the person from the facility after receiving
19 notice from the department pursuant to paragraph (3).

20 (d) (1) Before and, as applicable, subsequent to issuing a license
21 or certificate of approval to any person or persons to operate a
22 foster family home or certified family home as described in Section
23 1506, the State Department of Social Services or other approving
24 authority shall secure California and Federal Bureau of
25 Investigation criminal history information to determine whether
26 the applicant or any person specified in subdivision (b) who is not
27 exempt from fingerprinting has ever been convicted of a crime
28 other than a minor traffic violation or arrested for any crime
29 specified in subdivision (c) of Section 290 of the Penal Code, for
30 violating Section 245 or 273.5, subdivision (b) of Section 273a,
31 or, prior to January 1, 1994, paragraph (2) of Section 273a, of the
32 Penal Code, or for any crime for which the department is prohibited
33 from granting a criminal record exemption pursuant to subdivision
34 (g). The State Department of Social Services or other approving
35 authority shall not issue a license or certificate of approval to any
36 foster family home or certified family home applicant who has not
37 obtained both a California and Federal Bureau of Investigation
38 criminal record clearance or exemption from disqualification
39 pursuant to subdivision (g).

1 ~~(2) The criminal history information shall include the full~~
2 ~~criminal record, if any, of those persons.~~

3 ~~(3) Neither the Department of Justice nor the State Department~~
4 ~~of Social Services may charge a fee for the fingerprinting of an~~
5 ~~applicant for a license, special permit, or certificate of approval~~
6 ~~described in this subdivision. The record, if any, shall be taken~~
7 ~~into consideration when evaluating a prospective applicant.~~

8 ~~(4) The following shall apply to the criminal record information:~~

9 ~~(A) If the applicant or other persons specified in subdivision~~
10 ~~(b) who are not exempt from fingerprinting have convictions that~~
11 ~~would make the applicant's home unfit as a foster family home or~~
12 ~~a certified family home, the license, special permit, certificate of~~
13 ~~approval, or presenece shall be denied.~~

14 ~~(B) If the State Department of Social Services finds that the~~
15 ~~applicant, or any person specified in subdivision (b) who is not~~
16 ~~exempt from fingerprinting is awaiting trial for a crime other than~~
17 ~~a minor traffic violation, the State Department of Social Services~~
18 ~~or other approving authority may cease processing the criminal~~
19 ~~record information until the conclusion of the trial.~~

20 ~~(C) For purposes of this subdivision, a criminal record clearance~~
21 ~~provided under Section 8712 of the Family Code may be used by~~
22 ~~the department or other approving agency.~~

23 ~~(D) To the same extent required for federal funding, an applicant~~
24 ~~for a foster family home license or for certification as a family~~
25 ~~home, and any other person specified in subdivision (b) who is~~
26 ~~not exempt from fingerprinting, shall submit a set of fingerprint~~
27 ~~images and related information to the Department of Justice and~~
28 ~~the Federal Bureau of Investigation, through the Department of~~
29 ~~Justice, for a state and federal level criminal offender record~~
30 ~~information search, in addition to the criminal records search~~
31 ~~required by subdivision (a).~~

32 ~~(5) Any person specified in this subdivision shall, as a part of~~
33 ~~the application, be fingerprinted and sign a declaration under~~
34 ~~penalty of perjury regarding any prior criminal convictions or~~
35 ~~arrests for any crime against a child, spousal or cohabitant abuse,~~
36 ~~or any crime for which the department cannot grant an exemption~~
37 ~~if the person was convicted and shall submit these fingerprints to~~
38 ~~the licensing agency or other approving authority.~~

39 ~~(6) (A) Subsequent to initial licensure or certification, a person~~
40 ~~specified in subdivision (b) who is not exempt from fingerprinting~~

1 shall obtain both a California and Federal Bureau of Investigation
2 criminal record clearance, or an exemption from disqualification
3 pursuant to subdivision (g), prior to employment, residence, or
4 initial presence in the foster family or certified family home. A
5 foster family home licensee or foster family agency shall submit
6 fingerprint images and related information of persons specified in
7 subdivision (b) who are not exempt from fingerprinting to the
8 Department of Justice and the Federal Bureau of Investigation;
9 through the Department of Justice, for a state and federal level
10 criminal offender record information search, or to comply with
11 paragraph (1) of subdivision (h). A foster family home licensee's
12 or a foster family agency's failure to either prohibit the
13 employment, residence, or initial presence of a person specified
14 in subdivision (b) who is not exempt from fingerprinting and who
15 has not received either a criminal record clearance or an exemption
16 from disqualification pursuant to subdivision (g), or comply with
17 paragraph (1) of subdivision (h), as required in this section, shall
18 result in a citation of a deficiency, and the immediate civil penalties
19 of one hundred dollars (\$100) per violation per day for a maximum
20 of five days, unless the violation is a second or subsequent violation
21 within a 12-month period in which case the civil penalties shall
22 be in the amount of one hundred dollars (\$100) per violation for
23 a maximum of 30 days, and shall be grounds for disciplining the
24 licensee pursuant to Section 1550. A violation of the regulation
25 adopted pursuant to Section 1522.04 shall result in the citation of
26 a deficiency and an immediate assessment of civil penalties in the
27 amount of one hundred dollars (\$100) per violation per day for a
28 maximum of five days, unless the violation is a second or
29 subsequent violation within a 12-month period in which case the
30 civil penalties shall be in the amount of one hundred dollars (\$100)
31 per violation for a maximum of 30 days, and shall be grounds for
32 disciplining the foster family home licensee or the foster family
33 agency pursuant to Section 1550. The State Department of Social
34 Services may assess penalties for continued violations, as permitted
35 by Section 1548. The fingerprint images shall then be submitted
36 to the Department of Justice for processing.

37 (B) Upon request of the licensee, who shall enclose a
38 self-addressed envelope for this purpose, the Department of Justice
39 shall verify receipt of the fingerprints. Within five working days
40 of the receipt of the criminal record or information regarding

~~1 criminal convictions from the Department of Justice, the
2 department shall notify the applicant of any criminal arrests or
3 convictions. If no arrests or convictions are recorded, the
4 Department of Justice shall provide the foster family home licensee
5 or the foster family agency with a statement of that fact concurrent
6 with providing the information to the State Department of Social
7 Services.~~

~~8 (7) If the State Department of Social Services finds that the
9 applicant, or any other person specified in subdivision (b) who is
10 not exempt from fingerprinting, has been convicted of a crime
11 other than a minor traffic violation, the application or presence
12 shall be denied, unless the director grants an exemption from
13 disqualification pursuant to subdivision (g).~~

~~14 (8) If the State Department of Social Services finds after
15 licensure or the granting of the certificate of approval that the
16 licensee, certified foster parent, or any other person specified in
17 subdivision (b) who is not exempt from fingerprinting, has been
18 convicted of a crime other than a minor traffic violation, the license
19 or certificate of approval may be revoked by the department or the
20 foster family agency, whichever is applicable, unless the director
21 grants an exemption from disqualification pursuant to subdivision
22 (g). A licensee's failure to comply with the department's
23 prohibition of employment, contact with clients, or presence in
24 the facility as required by paragraph (3) of subdivision (c) shall
25 be grounds for disciplining the licensee pursuant to Section 1550.~~

~~26 (e) (1) The State Department of Social Services shall not use
27 a record of arrest to deny, revoke, or terminate any application,
28 license, employment, or residence unless the department
29 investigates the incident and secures evidence, whether or not
30 related to the incident of arrest, that is admissible in an
31 administrative hearing to establish conduct by the person that may
32 pose a risk to the health and safety of any person who is or may
33 become a client.~~

~~34 (2) The department shall not issue a criminal record clearance
35 to a person who has been arrested for any crime specified in Section
36 290 of the Penal Code, or for violating Section 245 or 273.5,
37 subdivision (b) of Section 273a, of the Penal Code, or, prior to
38 January 1, 1994, paragraph (2) of Section 273a of the Penal Code,
39 or for any crime for which the department is prohibited from
40 granting a criminal record exemption pursuant to subdivision (g),~~

1 prior to the department's completion of an investigation pursuant
2 to paragraph (1):

3 ~~(3) The State Department of Social Services is authorized to~~
4 ~~obtain any arrest or conviction records or reports from any law~~
5 ~~enforcement agency as necessary to the performance of its duties~~
6 ~~to inspect, license, and investigate community care facilities and~~
7 ~~individuals associated with a community care facility.~~

8 ~~(f) (1) For purposes of this section or any other provision of~~
9 ~~this chapter, a conviction means a plea or verdict of guilty or a~~
10 ~~conviction following a plea of nolo contendere. Any action that~~
11 ~~the State Department of Social Services is permitted to take~~
12 ~~following the establishment of a conviction may be taken when~~
13 ~~the time for appeal has elapsed, when the judgment of conviction~~
14 ~~has been affirmed on appeal, or when an order granting probation~~
15 ~~is made suspending the imposition of sentence, notwithstanding~~
16 ~~a subsequent order pursuant to Sections 1203.4 and 1203.4a of the~~
17 ~~Penal Code permitting the person to withdraw his or her plea of~~
18 ~~guilty and to enter a plea of not guilty, or setting aside the verdict~~
19 ~~of guilty, or dismissing the accusation, information, or indictment.~~
20 ~~For purposes of this section or any other provision of this chapter,~~
21 ~~the record of a conviction, or a copy thereof certified by the clerk~~
22 ~~of the court or by a judge of the court in which the conviction~~
23 ~~occurred, shall be conclusive evidence of the conviction. For~~
24 ~~purposes of this section or any other provision of this chapter, the~~
25 ~~arrest disposition report certified by the Department of Justice, or~~
26 ~~documents admissible in a criminal action pursuant to Section~~
27 ~~969b of the Penal Code, shall be prima facie evidence of the~~
28 ~~conviction, notwithstanding any other law prohibiting the~~
29 ~~admission of these documents in a civil or administrative action.~~

30 ~~(2) For purposes of this section or any other provision of this~~
31 ~~chapter, the department shall consider criminal convictions from~~
32 ~~another state or federal court as if the criminal offense was~~
33 ~~committed in this state.~~

34 ~~(g) (1) After review of the record, the director may grant an~~
35 ~~exemption from disqualification for a license or special permit as~~
36 ~~specified in paragraph (4) of subdivision (a), or for a license,~~
37 ~~special permit, or certificate of approval as specified in paragraphs~~
38 ~~(4), (7), and (8) of subdivision (d), or for employment, residence,~~
39 ~~or presence in a community care facility as specified in paragraphs~~
40 ~~(3), (4), and (5) of subdivision (e), if the director has substantial~~

1 and convincing evidence to support a reasonable belief that the
2 applicant and the person convicted of the crime, if other than the
3 applicant, are of good character as to justify issuance of the license
4 or special permit or granting an exemption for purposes of
5 subdivision (c). Except as otherwise provided in this subdivision,
6 an exemption shall not be granted pursuant to this subdivision if
7 the conviction was for any of the following offenses:

8 (A) (i) An offense specified in Section 220, 243.4, or 264.1;
9 subdivision (a) of Section 273a, or, prior to January 1, 1994,
10 paragraph (1) of Section 273a, Section 273d, 288, or 289,
11 subdivision (c) of Section 290, or Section 368, of the Penal Code,
12 or was a conviction of another crime against an individual specified
13 in subdivision (c) of Section 667.5 of the Penal Code.

14 (ii) Notwithstanding clause (i), the director may grant an
15 exemption regarding the conviction for an offense described in
16 paragraph (1), (2), (7), or (8) of subdivision (c) of Section 667.5
17 of the Penal Code, if the employee or prospective employee has
18 been rehabilitated as provided in Section 4852.03 of the Penal
19 Code, has maintained the conduct required in Section 4852.05 of
20 the Penal Code for at least 10 years, and has the recommendation
21 of the district attorney representing the employee's county of
22 residence, or if the employee or prospective employee has received
23 a certificate of rehabilitation pursuant to Chapter 3.5 (commencing
24 with Section 4852.01) of Title 6 of Part 3 of the Penal Code. This
25 clause shall not apply to foster care providers, including relative
26 caregivers, nonrelated extended family members, or any other
27 person specified in subdivision (b), in those homes where the
28 individual has been convicted of an offense described in paragraph
29 (1) of subdivision (c) of Section 667.5 of the Penal Code.

30 (B) A felony offense specified in Section 729 of the Business
31 and Professions Code or Section 206 or 215, subdivision (a) of
32 Section 347, subdivision (b) of Section 417, or subdivision (a) of
33 Section 451 of the Penal Code.

34 (C) Under no circumstances shall an exemption be granted
35 pursuant to this subdivision to any foster care provider applicant
36 if that applicant, or any other person specified in subdivision (b)
37 in those homes, has a felony conviction for either of the following
38 offenses:

39 (i) A felony conviction for child abuse or neglect, spousal abuse,
40 crimes against a child, including child pornography, or for a crime

1 involving violence, including rape, sexual assault, or homicide,
2 but not including other physical assault and battery. For purposes
3 of this subparagraph, a crime involving violence means a violent
4 crime specified in clause (i) of subparagraph (A), or subparagraph
5 (B).

6 (ii) A felony conviction, within the last five years, for physical
7 assault, battery, or a drug- or alcohol-related offense.

8 (iii) This subparagraph shall not apply to licenses or approvals
9 wherein a caregiver was granted an exemption to a criminal
10 conviction described in clause (i) or (ii) prior to the enactment of
11 this subparagraph.

12 (iv) This subparagraph shall remain operative only to the extent
13 that compliance with its provisions is required by federal law as
14 a condition for receiving funding under Title IV-E of the federal
15 Social Security Act (42 U.S.C. Sec. 670 et seq.).

16 (2) The department shall not prohibit a person from being
17 employed or having contact with clients in a facility on the basis
18 of a denied criminal record exemption request or arrest information
19 unless the department complies with the requirements of Section
20 1558.

21 (h) (1) For purposes of compliance with this section, the
22 department may permit an individual to transfer a current criminal
23 record clearance, as defined in subdivision (a), from one facility
24 to another, as long as the criminal record clearance has been
25 processed through a state licensing district office, and is being
26 transferred to another facility licensed by a state licensing district
27 office. The request shall be in writing to the State Department of
28 Social Services, and shall include a copy of the person's driver's
29 license or valid identification card issued by the Department of
30 Motor Vehicles, or a valid photo identification issued by another
31 state or the United States government if the person is not a
32 California resident. Upon request of the licensee, who shall enclose
33 a self-addressed envelope for this purpose, the State Department
34 of Social Services shall verify whether the individual has a
35 clearance that can be transferred.

36 (2) The State Department of Social Services shall hold criminal
37 record clearances in its active files for a minimum of three years
38 after an employee is no longer employed at a licensed facility in
39 order for the criminal record clearance to be transferred.

~~(3) The following shall apply to a criminal record clearance or exemption from the department or a county office with department-delegated licensing authority:~~

~~(A) A county office with department-delegated licensing authority may accept a clearance or exemption from the department.~~

~~(B) The department may accept a clearance or exemption from any county office with department-delegated licensing authority.~~

~~(C) A county office with department-delegated licensing authority may accept a clearance or exemption from any other county office with department-delegated licensing authority.~~

~~(4) With respect to notifications issued by the Department of Justice pursuant to Section 11105.2 of the Penal Code concerning an individual whose criminal record clearance was originally processed by the department or a county office with department-delegated licensing authority, all of the following shall apply:~~

~~(A) The Department of Justice shall process a request from the department or a county office with department-delegated licensing authority to receive the notice only if all of the following conditions are met:~~

~~(i) The request shall be submitted to the Department of Justice by the agency to be substituted to receive the notification.~~

~~(ii) The request shall be for the same applicant type as the type for which the original clearance was obtained.~~

~~(iii) The request shall contain all prescribed data elements and format protocols pursuant to a written agreement between the department and the Department of Justice.~~

~~(B) (i) On or before January 7, 2005, the department shall notify the Department of Justice of all county offices that have department-delegated licensing authority.~~

~~(ii) The department shall notify the Department of Justice within 15 calendar days of the date on which a new county office receives department-delegated licensing authority or a county's delegated licensing authority is rescinded.~~

~~(C) The Department of Justice shall charge the department, a county office with department-delegated licensing authority, or a county child welfare agency with criminal record clearance and exemption authority, a fee for each time a request to substitute the~~

1 recipient agency is received for purposes of this paragraph. This
2 fee shall not exceed the cost of providing the service.

3 ~~(5) (A) A county child welfare agency with authority to secure~~
4 ~~clearances pursuant to Section 16504.5 of the Welfare and~~
5 ~~Institutions Code and to grant exemptions pursuant to Section~~
6 ~~361.4 of the Welfare and Institutions Code may accept a clearance~~
7 ~~or exemption from another county with criminal record and~~
8 ~~exemption authority pursuant to these sections.~~

9 ~~(B) With respect to notifications issued by the Department of~~
10 ~~Justice pursuant to Section 11105.2 of the Penal Code concerning~~
11 ~~an individual whose criminal record clearance was originally~~
12 ~~processed by a county child welfare agency with criminal record~~
13 ~~clearance and exemption authority, the Department of Justice shall~~
14 ~~process a request from a county child welfare agency with criminal~~
15 ~~record and exemption authority to receive the notice only if all of~~
16 ~~the following conditions are met:~~

17 ~~(i) The request shall be submitted to the Department of Justice~~
18 ~~by the agency to be substituted to receive the notification.~~

19 ~~(ii) The request shall be for the same applicant type as the type~~
20 ~~for which the original clearance was obtained.~~

21 ~~(iii) The request shall contain all prescribed data elements and~~
22 ~~format protocols pursuant to a written agreement between the State~~
23 ~~Department of Social Services and the Department of Justice.~~

24 ~~(i) The full criminal record obtained for purposes of this section~~
25 ~~may be used by the department or by a licensed adoption agency~~
26 ~~as a clearance required for adoption purposes.~~

27 ~~(j) If a licensee or facility is required by law to deny employment~~
28 ~~or to terminate employment of any employee based on written~~
29 ~~notification from the state department that the employee has a prior~~
30 ~~criminal conviction or is determined unsuitable for employment~~
31 ~~under Section 1558, the licensee or facility shall not incur civil~~
32 ~~liability or unemployment insurance liability as a result of that~~
33 ~~denial or termination.~~

34 ~~(k) The State Department of Social Services may charge a fee~~
35 ~~for the costs of processing electronic fingerprint images and related~~
36 ~~information.~~

37 ~~(l) Amendments to this section made in the 1999 portion of the~~
38 ~~1999–2000 Regular Session shall be implemented commencing~~
39 ~~60 days after the effective date of the act amending this section in~~
40 ~~the 1999 portion of the 1999–2000 Regular Session, except that~~

1 ~~those provisions for the submission of fingerprints for searching~~
2 ~~the records of the Federal Bureau of Investigation shall be~~
3 ~~implemented 90 days after the effective date of that act.~~

4 *SECTION 1. Section 1522 of the Health and Safety Code is*
5 *amended to read:*

6 1522. The Legislature recognizes the need to generate timely
7 and accurate positive fingerprint identification of applicants as a
8 condition of issuing licenses, permits, or certificates of approval
9 for persons to operate or provide direct care services in a
10 community care facility, foster family home, or a certified family
11 home of a licensed foster family agency. Therefore, the Legislature
12 supports the use of the fingerprint live-scan technology, as
13 identified in the long-range plan of the Department of Justice for
14 fully automating the processing of fingerprints and other data by
15 the year 1999, otherwise known as the California Crime
16 Information Intelligence System (CAL-CII), to be used for
17 applicant fingerprints. It is the intent of the Legislature in enacting
18 this section to require the fingerprints of those individuals whose
19 contact with community care clients may pose a risk to the clients'
20 health and safety. An individual shall be required to obtain either
21 a criminal record clearance or a criminal record exemption from
22 the State Department of Social Services before his or her initial
23 presence in a community care facility or certified family home.

24 (a) (1) *Before and, as applicable, subsequent to* issuing a license
25 or special permit to any person or persons to operate or manage a
26 community care facility, the State Department of Social Services
27 shall secure from an appropriate law enforcement agency a criminal
28 record to determine whether the applicant or any other person
29 specified in subdivision (b) has ever been convicted of a crime
30 other than a minor traffic violation or arrested for any crime
31 specified in Section 290 of the Penal Code, *or* for violating Section
32 245, 273*ab*, or ~~273.5~~; 273.5 of the Penal Code, subdivision (b) of
33 Section 273a of the Penal Code, or, prior to January 1, 1994,
34 paragraph (2) of Section 273a of the Penal Code, or for any crime
35 for which the department ~~cannot grant an exemption if the person~~
36 ~~was convicted and the person has not been exonerated~~ *is prohibited*
37 *from granting a criminal record exemption pursuant to subdivision*
38 *(g).*

1 (2) The criminal history information shall include the full
2 criminal record, if any, of those persons, and subsequent arrest
3 information pursuant to Section 11105.2 of the Penal Code.

4 (3) Except during the 2003–04 to the 2014–15 fiscal years,
5 inclusive, neither the Department of Justice nor the State
6 Department of Social Services may charge a fee for the
7 fingerprinting of an applicant for a license or special permit to
8 operate a facility providing nonmedical board, room, and care for
9 six or less children or for obtaining a criminal record of the
10 applicant pursuant to this section.

11 (4) The following shall apply to the criminal record information:

12 (A) If the State Department of Social Services finds that the
13 applicant, or any other person specified in subdivision (b), has
14 been convicted of a crime other than a minor traffic violation, the
15 application shall be denied, unless the director grants an exemption
16 pursuant to subdivision (g).

17 (B) If the State Department of Social Services finds that the
18 applicant, or any other person specified in subdivision ~~(b)~~ (b), is
19 awaiting trial for a crime other than a minor traffic violation, the
20 State Department of Social Services may cease processing the
21 ~~application~~ *criminal record information* until the conclusion of
22 the trial.

23 (C) If no criminal record information has been recorded, the
24 Department of Justice shall provide the applicant and the State
25 Department of Social Services with a statement of that fact.

26 (D) If the State Department of Social Services finds after
27 licensure that the licensee, or any other person specified in
28 paragraph (1) of subdivision (b), has been convicted of a crime
29 other than a minor traffic violation, the license may be revoked,
30 unless the director grants an exemption pursuant to subdivision
31 (g).

32 (E) An applicant and any other person specified in subdivision
33 (b) shall submit fingerprint images and related information to the
34 Department of Justice for the purpose of searching the criminal
35 records of the Federal Bureau of Investigation, in addition to the
36 criminal records search required by this subdivision. If an applicant
37 and all other persons described in subdivision (b) meet all of the
38 conditions for licensure, except receipt of the Federal Bureau of
39 Investigation's criminal offender record information search
40 response for the applicant or any of the persons described in

subdivision (b), the department may issue a license if the applicant and each person described in subdivision (b) has signed and submitted a statement that he or she has never been convicted of a crime in the United States, other than a traffic infraction, as prescribed in paragraph (1) of subdivision (a) of Section 42001 of the Vehicle Code. If, after licensure, or the issuance of a certificate of approval of a certified family home by a foster family agency, the department determines that the licensee or any other person specified in subdivision (b) has a criminal record, the department may revoke the license, or require a foster family agency to revoke the certificate of approval, pursuant to Section 1550. The department may also suspend the license or require a foster family agency to suspend the certificate of approval pending an administrative hearing pursuant to Section 1550.5.

(F) The State Department of Social Services shall develop procedures to provide the individual's state and federal criminal history information with the written notification of his or her exemption denial or revocation based on the criminal record. Receipt of the criminal history information shall be optional on the part of the individual, as set forth in the agency's procedures. The procedure shall protect the confidentiality and privacy of the individual's record, and the criminal history information shall not be made available to the employer.

(G) Notwithstanding any other law, the department is authorized to provide an individual with a copy of his or her state or federal level criminal offender record information search response as provided to that department by the Department of Justice if the department has denied a criminal background clearance based on this information and the individual makes a written request to the department for a copy specifying an address to which it is to be sent. The state or federal level criminal offender record information search response shall not be modified or altered from its form or content as provided by the Department of Justice and shall be provided to the address specified by the individual in his or her written request. The department shall retain a copy of the individual's written request and the response and date provided.

(b) (1) In addition to the applicant, this section shall be applicable to criminal ~~convictions~~ *of record clearances and exemptions* for the following persons:

1 (A) Adults responsible for administration or direct supervision
2 of staff.

3 (B) Any person, other than a client, residing in the facility or
4 certified family home.

5 (C) Any person who provides client assistance in dressing,
6 grooming, bathing, or personal hygiene. Any nurse assistant or
7 home health aide meeting the requirements of Section 1338.5 or
8 1736.6, respectively, who is not employed, retained, or contracted
9 by the licensee, and who has been certified or recertified on or
10 after July 1, 1998, shall be deemed to meet the criminal record
11 clearance requirements of this section. A certified nurse assistant
12 and certified home health aide who will be providing client
13 assistance and who falls under this exemption shall provide one
14 copy of his or her current certification, prior to providing care, to
15 the community care facility. The facility shall maintain the copy
16 of the certification on file as long as care is being provided by the
17 certified nurse assistant or certified home health aide at the facility
18 or certified family home. Nothing in this paragraph restricts the
19 right of the department to exclude a certified nurse assistant or
20 certified home health aide from a licensed community care facility
21 or certified family home pursuant to Section 1558.

22 (D) Any staff person, volunteer, or employee who has contact
23 with the clients.

24 (E) If the applicant is a firm, partnership, association, or
25 corporation, the chief executive officer or other person serving in
26 like capacity.

27 (F) Additional officers of the governing body of the applicant,
28 or other persons with a financial interest in the applicant, as
29 determined necessary by the department by regulation. The criteria
30 used in the development of these regulations shall be based on the
31 person's capability to exercise substantial influence over the
32 operation of the facility.

33 (2) The following persons are exempt from the requirements
34 applicable under paragraph (1):

35 (A) A medical professional as defined in department regulations
36 who holds a valid license or certification from the person's
37 governing California medical care regulatory entity and who is
38 not employed, retained, or contracted by the licensee if all of the
39 following apply:

- 1 (i) The criminal record of the person has been cleared as a
2 condition of licensure or certification by the person's governing
3 California medical care regulatory entity.
- 4 (ii) The person is providing time-limited specialized clinical
5 care or services.
- 6 (iii) The person is providing care or services within the person's
7 scope of practice.
- 8 (iv) The person is not a community care facility licensee or an
9 employee of the facility.
- 10 (B) A third-party repair person or similar retained contractor if
11 all of the following apply:
- 12 (i) The person is hired for a defined, time-limited job.
- 13 (ii) The person is not left alone with clients.
- 14 (iii) When clients are present in the room in which the repair
15 person or contractor is working, a staff person who has a criminal
16 record clearance or exemption is also present.
- 17 (C) Employees of a licensed home health agency and other
18 members of licensed hospice interdisciplinary teams who have a
19 contract with a client or resident of the facility and are in the
20 facility at the request of that client or resident's legal
21 decisionmaker. The exemption does not apply to a person who is
22 a community care facility licensee or an employee of the facility.
- 23 (D) Clergy and other spiritual caregivers who are performing
24 services in common areas of the community care facility or who
25 are advising an individual client at the request of, or with the
26 permission of, the client or legal decisionmaker, are exempt from
27 fingerprint and criminal background check requirements imposed
28 by community care licensing. This exemption does not apply to a
29 person who is a community care licensee or employee of the
30 facility.
- 31 (E) Members of fraternal, service, or similar organizations who
32 conduct group activities for clients if all of the following apply:
- 33 (i) Members are not left alone with clients.
- 34 (ii) Members do not transport clients off the facility premises.
- 35 (iii) The same organization does not conduct group activities
36 for clients more often than defined by the department's regulations.
- 37 (3) In addition to the exemptions in paragraph (2), the following
38 persons in foster family homes, certified family homes, and small
39 family homes are exempt from the requirements applicable under
40 paragraph (1):

1 (A) Adult friends and family of the licensed or certified foster
2 parent, who come into the home to visit for a length of time no
3 longer than defined by the department in regulations, provided
4 that the adult friends and family of the licensee or certified parent
5 are not left alone with the foster children. However, the licensee
6 or certified parent, acting as a reasonable and prudent parent, as
7 defined in paragraph (2) of subdivision (a) of Section 362.04 of
8 the Welfare and Institutions Code, may allow his or her adult
9 friends and family to provide short-term care to the foster child
10 and act as an appropriate occasional short-term babysitter for the
11 child.

12 (B) Parents of a foster child's friend when the foster child is
13 visiting the friend's home and the friend, licensed or certified foster
14 parent, or both are also present. However, the licensee or certified
15 parent, acting as a reasonable and prudent parent, may allow the
16 parent of the foster child's friend to act as an appropriate short-term
17 babysitter for the child without the friend being present.

18 (C) Individuals who are engaged by any licensed or certified
19 foster parent to provide short-term care to the child for periods not
20 to exceed 24 hours. Caregivers shall use a reasonable and prudent
21 parent standard in selecting appropriate individuals to act as
22 appropriate occasional short-term babysitters.

23 (4) In addition to the exemptions specified in paragraph (2), the
24 following persons in adult day care and adult day support centers
25 are exempt from the requirements applicable under paragraph (1):

26 (A) Unless contraindicated by the client's individualized
27 program plan (IPP) or needs and service plan, a spouse, significant
28 other, relative, or close friend of a client, or an attendant or a
29 facilitator for a client with a developmental disability if the
30 attendant or facilitator is not employed, retained, or contracted by
31 the licensee. This exemption applies only if the person is visiting
32 the client or providing direct care and supervision to the client.

33 (B) A volunteer if all of the following applies:

34 (i) The volunteer is supervised by the licensee or a facility
35 employee with a criminal record clearance or exemption.

36 (ii) The volunteer is never left alone with clients.

37 (iii) The volunteer does not provide any client assistance with
38 dressing, grooming, bathing, or personal hygiene other than
39 washing of hands.

1 (5) (A) In addition to the exemptions specified in paragraph
2 (2), the following persons in adult residential and social
3 rehabilitation facilities, unless contraindicated by the client's
4 individualized program plan (IPP) or needs and services plan, are
5 exempt from the requirements applicable under paragraph (1): a
6 spouse, significant other, relative, or close friend of a client, or an
7 attendant or a facilitator for a client with a developmental disability
8 if the attendant or facilitator is not employed, retained, or
9 contracted by the licensee. This exemption applies only if the
10 person is visiting the client or providing direct care and supervision
11 to that client.

12 (B) Nothing in this subdivision shall prevent a licensee from
13 requiring a criminal record clearance of any individual exempt
14 from the requirements of this section, provided that the individual
15 has client contact.

16 (6) Any person similar to those described in this subdivision,
17 as defined by the department in regulations.

18 (c) (1) Subsequent to initial licensure, a person specified in
19 subdivision (b) who is not exempted from fingerprinting shall
20 obtain either a criminal record clearance or an exemption from
21 disqualification pursuant to subdivision (g) from the State
22 Department of Social Services prior to employment, residence, or
23 initial presence in the facility. A person specified in subdivision
24 (b) who is not exempt from fingerprinting shall be fingerprinted
25 and shall sign a declaration under penalty of perjury regarding any
26 prior criminal convictions. The licensee shall submit fingerprint
27 images and related information to the Department of Justice and
28 the Federal Bureau of Investigation, through the Department of
29 Justice, for a state and federal level criminal offender record
30 information search, or comply with paragraph (1) of subdivision
31 (h). These fingerprint images and related information shall be sent
32 by electronic transmission in a manner approved by the State
33 Department of Social Services and the Department of Justice for
34 the purpose of obtaining a permanent set of fingerprints, and shall
35 be submitted to the Department of Justice by the licensee. A
36 licensee's failure to prohibit the employment, residence, or initial
37 presence of a person specified in subdivision (b) who is not exempt
38 from fingerprinting and who has not received either a criminal
39 record clearance or an exemption from disqualification pursuant
40 to subdivision (g) or to comply with paragraph (1) of subdivision

(h), as required in this section, shall result in the citation of a deficiency and the immediate assessment of civil penalties in the amount of one hundred dollars (\$100) per violation per day for a maximum of five days, unless the violation is a second or subsequent violation within a 12-month period in which case the civil penalties shall be in the amount of one hundred dollars (\$100) per violation for a maximum of 30 days, and shall be grounds for disciplining the licensee pursuant to Section 1550. The department may assess civil penalties for continued violations as permitted by Section 1548. The fingerprint images and related information shall then be submitted to the Department of Justice for processing. Upon request of the licensee, who shall enclose a self-addressed stamped postcard for this purpose, the Department of Justice shall verify receipt of the fingerprints.

(2) Within 14 calendar days of the receipt of the fingerprint images, the Department of Justice shall notify the State Department of Social Services of the criminal record information, as provided for in subdivision (a). If no criminal record information has been recorded, the Department of Justice shall provide the licensee and the State Department of Social Services with a statement of that fact within 14 calendar days of receipt of the fingerprint images. Documentation of the individual's clearance or exemption from disqualification shall be maintained by the licensee and be available for inspection. If new fingerprint images are required for processing, the Department of Justice shall, within 14 calendar days from the date of receipt of the fingerprints, notify the licensee that the fingerprints were illegible, the Department of Justice shall notify the State Department of Social Services, as required by Section 1522.04, and shall also notify the licensee by mail, within 14 days of electronic transmission of the fingerprints to the Department of Justice, if the person has no criminal history recorded. A violation of the regulations adopted pursuant to Section 1522.04 shall result in the citation of a deficiency and an immediate assessment of civil penalties in the amount of one hundred dollars (\$100) per violation per day for a maximum of five days, unless the violation is a second or subsequent violation within a 12-month period in which case the civil penalties shall be in the amount of one hundred dollars (\$100) per violation for a maximum of 30 days, and shall be grounds for disciplining the licensee pursuant

1 to Section 1550. The department may assess civil penalties for
2 continued violations as permitted by Section 1548.

3 (3) Except for persons specified in subdivision (b) who are
4 exempt from fingerprinting, the licensee shall endeavor to ascertain
5 the previous employment history of persons required to be
6 fingerprinted. If it is determined by the State Department of Social
7 Services, on the basis of the fingerprint images and related
8 information submitted to the Department of Justice, that subsequent
9 to obtaining a criminal record clearance or exemption from
10 disqualification pursuant to subdivision (g), the person has been
11 convicted of, or is awaiting trial for, a sex offense against a minor,
12 or has been convicted for an offense specified in Section 243.4,
13 273a, 273ab, 273d, 273g, or 368 of the Penal Code, or a felony,
14 the State Department of Social Services shall notify the licensee
15 to act immediately to terminate the person's employment, remove
16 the person from the community care facility, or bar the person
17 from entering the community care facility. The State Department
18 of Social Services may subsequently grant an exemption from
19 disqualification pursuant to subdivision (g). If the conviction or
20 arrest was for another crime, except a minor traffic violation, the
21 licensee shall, upon notification by the State Department of Social
22 Services, act immediately to either (A) terminate the person's
23 employment, remove the person from the community care facility,
24 or bar the person from entering the community care facility; or
25 (B) seek an exemption from disqualification pursuant to subdivision
26 (g). The State Department of Social Services shall determine if
27 the person shall be allowed to remain in the facility until a decision
28 on the exemption from disqualification is rendered. A licensee's
29 failure to comply with the department's prohibition of employment,
30 contact with clients, or presence in the facility as required by this
31 paragraph shall result in a citation of deficiency and an immediate
32 assessment of civil penalties in the amount of one hundred dollars
33 (\$100) per violation per day and shall be grounds for disciplining
34 the licensee pursuant to Section 1550.

35 (4) The department may issue an exemption from
36 disqualification on its own motion pursuant to subdivision (g) if
37 the person's criminal history indicates that the person is of good
38 character based on the age, seriousness, and frequency of the
39 conviction or convictions. The department, in consultation with
40 interested parties, shall develop regulations to establish the criteria

1 to grant an exemption from disqualification pursuant to this
2 paragraph.

3 (5) Concurrently with notifying the licensee pursuant to
4 paragraph (3), the department shall notify the affected individual
5 of his or her right to seek an exemption from disqualification
6 pursuant to subdivision (g). The individual may seek an exemption
7 from disqualification only if the licensee terminates the person's
8 employment or removes the person from the facility after receiving
9 notice from the department pursuant to paragraph (3).

10 (d) (1) Before *and, as applicable, subsequent to* issuing a
11 license or certificate of approval to any person or persons to operate
12 a foster family home or certified family home as described in
13 Section 1506, the State Department of Social Services or other
14 approving authority shall secure California and Federal Bureau of
15 Investigation criminal history information to determine whether
16 the applicant or any person specified in subdivision (b) who is not
17 exempt from fingerprinting has ever been convicted of a crime
18 other than a minor traffic violation or arrested for any crime
19 specified in subdivision (c) of Section 290 of the Penal Code, for
20 violating Section 245, 273ab, or 273.5, subdivision (b) of Section
21 273a 273a, or, prior to January 1, 1994, paragraph (2) of Section
22 273a 273a, of the Penal Code, or for any crime for which the
23 department ~~cannot grant an exemption if the person was convicted~~
24 ~~and the person has not been exonerated~~ *is prohibited from granting*
25 *a criminal record exemption pursuant to subdivision (g)*. The State
26 Department of Social Services or other approving authority shall
27 not issue a license or certificate of approval to any foster family
28 home or certified family home applicant who has not obtained
29 both a California and Federal Bureau of Investigation criminal
30 record clearance or exemption from disqualification pursuant to
31 subdivision (g).

32 (2) The criminal history information shall include the full
33 criminal record, if any, of those persons.

34 (3) Neither the Department of Justice nor the State Department
35 of Social Services may charge a fee for the fingerprinting of an
36 applicant for a license, special permit, or certificate of approval
37 described in this subdivision. The record, if any, shall be taken
38 into consideration when evaluating a prospective applicant.

39 (4) The following shall apply to the criminal record information:

1 (A) If the applicant or other persons specified in subdivision
2 (b) who are not exempt from fingerprinting have convictions that
3 would make the applicant's home unfit as a foster family home or
4 a certified family home, the license, special permit, ~~or~~ certificate
5 of approval, *or presence* shall be denied.

6 (B) If the State Department of Social Services finds that the
7 applicant, or any person specified in subdivision (b) who is not
8 exempt from fingerprinting is awaiting trial for a crime other than
9 a minor traffic violation, the State Department of Social Services
10 or other approving authority may cease processing the ~~application~~
11 *criminal record information* until the conclusion of the trial.

12 (C) For purposes of this subdivision, a criminal record clearance
13 provided under Section 8712 of the Family Code may be used by
14 the department or other approving agency.

15 (D) To the same extent required for federal funding, an applicant
16 for a foster family home license or for certification as a family
17 home, and any other person specified in subdivision (b) who is
18 not exempt from fingerprinting, shall submit a set of fingerprint
19 images and related information to the Department of Justice and
20 the Federal Bureau of Investigation, through the Department of
21 Justice, for a state and federal level criminal offender record
22 information search, in addition to the criminal records search
23 required by subdivision (a).

24 (5) Any person specified in this subdivision shall, as a part of
25 the application, be fingerprinted and sign a declaration under
26 penalty of perjury regarding any prior criminal convictions or
27 arrests for any crime against a child, spousal or cohabitant ~~abuse~~
28 ~~or, abuse, or~~ any crime for which the department cannot grant an
29 exemption if the person was convicted and shall submit these
30 fingerprints to the licensing agency or other approving authority.

31 (6) (A) Subsequent to initial licensure or certification, a person
32 specified in subdivision (b) who is not exempt from fingerprinting
33 shall obtain both a California and Federal Bureau of Investigation
34 criminal record clearance, or an exemption from disqualification
35 pursuant to subdivision (g), prior to employment, residence, or
36 initial presence in the foster family or certified family home. A
37 foster family home licensee or foster family agency shall submit
38 fingerprint images and related information of persons specified in
39 subdivision (b) who are not exempt from fingerprinting to the
40 Department of Justice and the Federal Bureau of Investigation,

1 through the Department of Justice, for a state and federal level
2 criminal offender record information search, or to comply with
3 paragraph (1) of subdivision (h). A foster family home licensee's
4 or a foster family agency's failure to either prohibit the
5 employment, residence, or initial presence of a person specified
6 in subdivision (b) who is not exempt from fingerprinting and who
7 has not received either a criminal record clearance or an exemption
8 from disqualification pursuant to subdivision (g), or comply with
9 paragraph (1) of subdivision (h), as required in this section, shall
10 result in a citation of a deficiency, and the immediate civil penalties
11 of one hundred dollars (\$100) per violation per day for a maximum
12 of five days, unless the violation is a second or subsequent violation
13 within a 12-month period in which case the civil penalties shall
14 be in the amount of one hundred dollars (\$100) per violation for
15 a maximum of 30 days, and shall be grounds for disciplining the
16 licensee pursuant to Section 1550. A violation of the regulation
17 adopted pursuant to Section 1522.04 shall result in the citation of
18 a deficiency and an immediate assessment of civil penalties in the
19 amount of one hundred dollars (\$100) per violation per day for a
20 maximum of five days, unless the violation is a second or
21 subsequent violation within a 12-month period in which case the
22 civil penalties shall be in the amount of one hundred dollars (\$100)
23 per violation for a maximum of 30 days, and shall be grounds for
24 disciplining the foster family home licensee or the foster family
25 agency pursuant to Section 1550. The State Department of Social
26 Services may assess penalties for continued violations, as permitted
27 by Section 1548. The fingerprint images shall then be submitted
28 to the Department of Justice for processing.

29 (B) Upon request of the licensee, who shall enclose a
30 self-addressed envelope for this purpose, the Department of Justice
31 shall verify receipt of the fingerprints. Within five working days
32 of the receipt of the criminal record or information regarding
33 criminal convictions from the Department of Justice, the
34 department shall notify the applicant of any criminal arrests or
35 convictions. If no arrests or convictions are recorded, the
36 Department of Justice shall provide the foster family home licensee
37 or the foster family agency with a statement of that fact concurrent
38 with providing the information to the State Department of Social
39 Services.

1 (7) If the State Department of Social Services or other approving
2 authority finds that the applicant, or any other person specified in
3 subdivision (b) who is not exempt from fingerprinting, has been
4 convicted of a crime other than a minor traffic violation, the
5 application *or presence* shall be denied, unless the director grants
6 an exemption from disqualification pursuant to subdivision (g).

7 (8) If the State Department of Social Services or other approving
8 authority finds after licensure or the granting of the certificate of
9 approval that the licensee, certified foster parent, or any other
10 person specified in subdivision (b) who is not exempt from
11 fingerprinting, has been convicted of a crime other than a minor
12 traffic violation, the license or certificate of approval may be
13 revoked by the department or the foster family agency, whichever
14 is applicable, unless the director grants an exemption from
15 disqualification pursuant to subdivision (g). A licensee's failure
16 to comply with the department's prohibition of employment,
17 contact with clients, or presence in the facility as required by
18 paragraph (3) of subdivision (c) shall be grounds for disciplining
19 the licensee pursuant to Section 1550.

20 (e) (1) The State Department of Social Services shall not use
21 a record of arrest to deny, revoke, or terminate any application,
22 license, employment, or residence unless the department
23 investigates the incident and secures evidence, whether or not
24 related to the incident of arrest, that is admissible in an
25 administrative hearing to establish conduct by the person that may
26 pose a risk to the health and safety of any person who is or may
27 become a client. ~~The State Department of Social Services is~~
28 ~~authorized to obtain any arrest or conviction records or reports~~
29 ~~from any law enforcement agency as necessary to the performance~~
30 ~~of its duties to inspect, license, and investigate community care~~
31 ~~facilities and individuals associated with a community care facility.~~

32 (2) *The department shall not issue a criminal record clearance*
33 *to a person who has been arrested for any crime specified in*
34 *Section 290 of the Penal Code, or for violating Section 245, 273ab,*
35 *or 273.5, or subdivision (b) of Section 273a, of the Penal Code,*
36 *or, prior to January 1, 1994, paragraph (2) of Section 273a of the*
37 *Penal Code, or for any crime for which the department is*
38 *prohibited from granting a criminal record exemption pursuant*
39 *to subdivision (g), prior to the department's completion of an*
40 *investigation pursuant to paragraph (1).*

1 (3) *The State Department of Social Services is authorized to*
2 *obtain any arrest or conviction records or reports from any law*
3 *enforcement agency as necessary to the performance of its duties*
4 *to inspect, license, and investigate community care facilities and*
5 *individuals associated with a community care facility.*

6 (f) (1) For purposes of this section or any other provision of
7 this chapter, a conviction means a plea or verdict of guilty or a
8 conviction following a plea of nolo contendere. Any action that
9 the State Department of Social Services is permitted to take
10 following the establishment of a conviction may be taken when
11 the time for appeal has elapsed, when the judgment of conviction
12 has been affirmed on appeal, or when an order granting probation
13 is made suspending the imposition of sentence, notwithstanding
14 a subsequent order pursuant to Sections 1203.4 and 1203.4a of the
15 Penal Code permitting the person to withdraw his or her plea of
16 guilty and to enter a plea of not guilty, or setting aside the verdict
17 of guilty, or dismissing the accusation, information, or indictment.
18 For purposes of this section or any other provision of this chapter,
19 the record of a conviction, or a copy thereof certified by the clerk
20 of the court or by a judge of the court in which the conviction
21 occurred, shall be conclusive evidence of the conviction. For
22 purposes of this section or any other provision of this chapter, the
23 arrest disposition report certified by the Department of Justice, or
24 documents admissible in a criminal action pursuant to Section
25 969b of the Penal Code, shall be prima facie evidence of the
26 conviction, notwithstanding any other law prohibiting the
27 admission of these documents in a civil or administrative action.

28 (2) For purposes of this section or any other provision of this
29 chapter, the department shall consider criminal convictions from
30 another state or federal court as if the criminal offense was
31 committed in this state.

32 (g) (1) After review of the record, the director may grant an
33 exemption from disqualification for a license or special permit as
34 specified in paragraph (4) of subdivision (a), or for a license,
35 special permit, or certificate of approval as specified in paragraphs
36 (4), (7), and (8) of subdivision (d), or for employment, residence,
37 or presence in a community care facility as specified in paragraphs
38 (3), (4), and (5) of subdivision (c), if the director has substantial
39 and convincing evidence to support a reasonable belief that the
40 applicant and the person convicted of the crime, if other than the

1 applicant, are of good character as to justify issuance of the license
2 or special permit or granting an exemption for purposes of
3 subdivision (c). Except as otherwise provided in this subdivision,
4 an exemption shall not be granted pursuant to this subdivision if
5 the conviction was for any of the following offenses:

6 (A) (i) An offense specified in Section 220, 243.4, or 264.1,
7 subdivision (a) of Section ~~273a~~ 273a, or, prior to January 1, 1994,
8 paragraph (1) of Section 273a, Section 273ab, 273d, 288, or 289,
9 subdivision (c) of Section 290, or Section ~~368~~ 368, of the Penal
10 Code, or was a conviction of another crime against an individual
11 specified in subdivision (c) of Section 667.5 of the Penal Code.

12 (ii) Notwithstanding clause (i), the director may grant an
13 exemption regarding the conviction for an offense described in
14 paragraph (1), (2), (7), or (8) of subdivision (c) of Section 667.5
15 of the Penal Code, if the employee or prospective employee has
16 been rehabilitated as provided in Section 4852.03 of the Penal
17 Code, has maintained the conduct required in Section 4852.05 of
18 the Penal Code for at least 10 years, and has the recommendation
19 of the district attorney representing the employee's county of
20 residence, or if the employee or prospective employee has received
21 a certificate of rehabilitation pursuant to Chapter 3.5 (commencing
22 with Section 4852.01) of Title 6 of Part 3 of the Penal Code. This
23 clause shall not apply to foster care providers, including relative
24 caregivers, nonrelated extended family members, or any other
25 person specified in subdivision (b), in those homes where the
26 individual has been convicted of an offense described in paragraph
27 (1) of subdivision (c) of Section 667.5 of the Penal Code.

28 (B) A felony offense specified in Section 729 of the Business
29 and Professions Code or Section 206 or 215, subdivision (a) of
30 Section 347, subdivision (b) of Section 417, or subdivision (a) of
31 Section 451 of the Penal Code.

32 (C) Under no circumstances shall an exemption be granted
33 pursuant to this subdivision to any foster care provider applicant
34 if that applicant, or any other person specified in subdivision (b)
35 in those homes, has a felony conviction for either of the following
36 offenses:

37 (i) A felony conviction for child abuse or neglect, spousal abuse,
38 crimes against a child, including child pornography, or for a crime
39 involving violence, including rape, sexual assault, or homicide,
40 but not including other physical assault and battery. For purposes

1 of this subparagraph, a crime involving violence means a violent
2 crime specified in clause (i) of subparagraph (A), or subparagraph
3 (B).

4 (ii) A felony conviction, within the last five years, for physical
5 assault, battery, or a drug- or alcohol-related offense.

6 (iii) This subparagraph shall not apply to licenses or approvals
7 wherein a caregiver was granted an exemption to a criminal
8 conviction described in clause (i) or (ii) prior to the enactment of
9 this subparagraph.

10 (iv) This subparagraph shall remain operative only to the extent
11 that compliance with its provisions is required by federal law as
12 a condition for receiving funding under Title IV-E of the federal
13 Social Security Act (42 U.S.C. Sec. 670 et seq.).

14 (2) The department shall not prohibit a person from being
15 employed or having contact with clients in a facility on the basis
16 of a denied criminal record exemption request or arrest information
17 unless the department complies with the requirements of Section
18 1558.

19 (h) (1) For purposes of compliance with this section, the
20 department may permit an individual to transfer a current criminal
21 record clearance, as defined in subdivision (a), from one facility
22 to another, as long as the criminal record clearance has been
23 processed through a state licensing district office, and is being
24 transferred to another facility licensed by a state licensing district
25 office. The request shall be in writing to the State Department of
26 Social Services, and shall include a copy of the person's driver's
27 license or valid identification card issued by the Department of
28 Motor Vehicles, or a valid photo identification issued by another
29 state or the United States government if the person is not a
30 California resident. Upon request of the licensee, who shall enclose
31 a self-addressed envelope for this purpose, the State Department
32 of Social Services shall verify whether the individual has a
33 clearance that can be transferred.

34 (2) The State Department of Social Services shall hold criminal
35 record clearances in its active files for a minimum of three years
36 after an employee is no longer employed at a licensed facility in
37 order for the criminal record clearance to be transferred.

38 (3) The following shall apply to a criminal record clearance or
39 exemption from the department or a county office with
40 department-delegated licensing authority:

1 (A) A county office with department-delegated licensing
2 authority may accept a clearance or exemption from the
3 department.

4 (B) The department may accept a clearance or exemption from
5 any county office with department-delegated licensing authority.

6 (C) A county office with department-delegated licensing
7 authority may accept a clearance or exemption from any other
8 county office with department-delegated licensing authority.

9 (4) With respect to notifications issued by the Department of
10 Justice pursuant to Section 11105.2 of the Penal Code concerning
11 an individual whose criminal record clearance was originally
12 processed by the department or a county office with
13 department-delegated licensing authority, all of the following shall
14 apply:

15 (A) The Department of Justice shall process a request from the
16 department or a county office with department-delegated licensing
17 authority to receive the notice only if all of the following conditions
18 are met:

19 (i) The request shall be submitted to the Department of Justice
20 by the agency to be substituted to receive the notification.

21 (ii) The request shall be for the same applicant type as the type
22 for which the original clearance was obtained.

23 (iii) The request shall contain all prescribed data elements and
24 format protocols pursuant to a written agreement between the
25 department and the Department of Justice.

26 (B) (i) On or before January 7, 2005, the department shall notify
27 the Department of Justice of all county offices that have
28 department-delegated licensing authority.

29 (ii) The department shall notify the Department of Justice within
30 15 calendar days of the date on which a new county office receives
31 department-delegated licensing authority or a county's delegated
32 licensing authority is rescinded.

33 (C) The Department of Justice shall charge the department, a
34 county office with department-delegated licensing authority, or a
35 county child welfare agency with criminal record clearance and
36 exemption authority, a fee for each time a request to substitute the
37 recipient agency is received for purposes of this paragraph. This
38 fee shall not exceed the cost of providing the service.

39 (5) (A) A county child welfare agency with authority to secure
40 clearances pursuant to Section 16504.5 of the Welfare and

1 Institutions Code and to grant exemptions pursuant to Section
2 361.4 of the Welfare and Institutions Code may accept a clearance
3 or exemption from another county with criminal record and
4 exemption authority pursuant to these sections.

5 (B) With respect to notifications issued by the Department of
6 Justice pursuant to Section 11105.2 of the Penal Code concerning
7 an individual whose criminal record clearance was originally
8 processed by a county child welfare agency with criminal record
9 clearance and exemption authority, the Department of Justice shall
10 process a request from a county child welfare agency with criminal
11 record and exemption authority to receive the notice only if all of
12 the following conditions are met:

13 (i) The request shall be submitted to the Department of Justice
14 by the agency to be substituted to receive the notification.

15 (ii) The request shall be for the same applicant type as the type
16 for which the original clearance was obtained.

17 (iii) The request shall contain all prescribed data elements and
18 format protocols pursuant to a written agreement between the State
19 Department of Social Services and the Department of Justice.

20 (i) The full criminal record obtained for purposes of this section
21 may be used by the department or by a licensed adoption agency
22 as a clearance required for adoption purposes.

23 (j) If a licensee or facility is required by law to deny employment
24 or to terminate employment of any employee based on written
25 notification from the state department that the employee has a prior
26 criminal conviction or is determined unsuitable for employment
27 under Section 1558, the licensee or facility shall not incur civil
28 liability or unemployment insurance liability as a result of that
29 denial or termination.

30 (k) The State Department of Social Services may charge a fee
31 for the costs of processing electronic fingerprint images and related
32 information.

33 (l) Amendments to this section made in the 1999 portion of the
34 1999–2000 Regular Session shall be implemented commencing
35 60 days after the effective date of the act amending this section in
36 the 1999 portion of the 1999–2000 Regular Session, except that
37 those provisions for the submission of fingerprints for searching
38 the records of the Federal Bureau of Investigation shall be
39 implemented 90 days after the effective date of that act.

1 SEC. 2. Section 1568.09 of the Health and Safety Code is
2 amended to read:

3 1568.09. It is the intent of the Legislature in enacting this
4 section to require the electronic fingerprint images of those
5 individuals whose contact with residents of residential care
6 facilities for persons with a chronic, life-threatening illness may
7 pose a risk to the residents' health and safety.

8 It is the intent of the Legislature, in enacting this section, to
9 require the electronic fingerprint images of those individuals whose
10 contact with community care clients may pose a risk to the clients'
11 health and safety. An individual shall be required to obtain either
12 a criminal record clearance or a criminal record exemption from
13 the State Department of Social Services before his or her initial
14 presence in a residential care facility for persons with a chronic,
15 life-threatening illness.

16 (a) (1) Before and, as applicable, subsequent to issuing a license
17 to a person or persons to operate or manage a residential care
18 facility, the department shall secure from an appropriate law
19 enforcement agency a criminal record to determine whether the
20 applicant or any other person specified in subdivision (b) has ever
21 been convicted of a crime other than a minor traffic violation or
22 arrested for any crime specified in subdivision (c) of Section 290
23 of the Penal Code, or for violating Section 245, 273*ab*, or 273.5,
24 subdivision (b) of Section 273a, or, prior to January 1, 1994,
25 paragraph (2) of Section 273a, of the Penal Code, or for any crime
26 for which the department is prohibited from granting a criminal
27 record exemption pursuant to subdivision (f).

28 (2) The criminal history information shall include the full
29 criminal record, if any, of those persons, and subsequent arrest
30 information pursuant to Section 11105.2 of the Penal Code.

31 (3) The following shall apply to the criminal record information:

32 (A) If the State Department of Social Services finds that the
33 applicant or another person specified in subdivision (b), has been
34 convicted of a crime, other than a minor traffic violation, the
35 application shall be denied, unless the director grants an exemption
36 pursuant to subdivision (f).

37 (B) If the State Department of Social Services finds that the
38 applicant, or another person specified in subdivision (b), is awaiting
39 trial for a crime other than a minor traffic violation, the State

1 Department of Social Services may cease processing the criminal
2 record information until the conclusion of the trial.

3 (C) If no criminal record information has been recorded, the
4 Department of Justice shall provide the applicant and the State
5 Department of Social Services with a statement of that fact.

6 (D) If the State Department of Social Services finds after
7 licensure that the licensee, or any other person specified in
8 paragraph (2) of subdivision (b), has been convicted of a crime
9 other than a minor traffic violation, the license may be revoked,
10 unless the director grants an exemption pursuant to subdivision
11 (f).

12 (E) An applicant and any other person specified in subdivision
13 (b) shall submit fingerprint images and related information to the
14 Department of Justice and the Federal Bureau of Investigation,
15 through the Department of Justice, for a state and federal level
16 criminal offender record information search, in addition to the
17 search required by this subdivision. If an applicant meets all other
18 conditions for licensure, except receipt of the Federal Bureau of
19 Investigation's criminal history information for the applicant and
20 persons listed in subdivision (b), the department may issue a license
21 if the applicant and each person described by subdivision (b) has
22 signed and submitted a statement that he or she has never been
23 convicted of a crime in the United States, other than a traffic
24 infraction as defined in paragraph (1) of subdivision (a) of Section
25 42001 of the Vehicle Code. If, after licensure, the department
26 determines that the licensee or person specified in subdivision (b)
27 has a criminal record, the license may be revoked pursuant to
28 subdivision (a) of Section 1568.082. The department may also
29 suspend the license pending an administrative hearing pursuant to
30 subdivision (b) of Section 1568.082.

31 (b) In addition to the applicant, this section shall be applicable
32 to criminal record clearances and exemptions for the following
33 persons:

34 (1) Adults responsible for administration or direct supervision
35 of staff of the facility.

36 (2) A person, other than a resident, residing in the facility.

37 (3) A person who provides resident assistance in dressing,
38 grooming, bathing, or personal hygiene. A nurse assistant or home
39 health aide meeting the requirements of Section 1338.5 or 1736.6,
40 respectively, who is not employed, retained, or contracted by the

1 licensee, and who has been certified or recertified on or after July
2 1, 1998, shall be deemed to meet the criminal record clearance
3 requirements of this section. A certified nurse assistant and certified
4 home health aide who will be providing client assistance and who
5 falls under this exemption shall provide one copy of his or her
6 current certification, prior to providing care, to the residential care
7 facility for persons with a chronic, life-threatening illness. The
8 facility shall maintain the copy of the certification on file as long
9 as care is being provided by the certified nurse assistant or certified
10 home health aide at the facility. This paragraph does not restrict
11 the right of the department to exclude a certified nurse assistant
12 or certified home health aide from a licensed residential care
13 facility for persons with a chronic, life-threatening illness pursuant
14 to Section 1568.092.

15 (4) (A) A staff person, volunteer, or employee who has contact
16 with the residents.

17 (B) A volunteer shall be exempt from the requirements of this
18 subdivision if he or she is a relative, significant other, or close
19 friend of a client receiving care in the facility and the volunteer
20 does not provide direct care and supervision of residents. A
21 volunteer who provides direct care and supervision shall be exempt
22 if the volunteer is a resident's spouse, significant other, close
23 friend, or family member and provides direct care and supervision
24 to that resident only at the request of the resident. The department
25 may define in regulations persons similar to those described in this
26 subparagraph who may be exempt from the requirements of this
27 subdivision.

28 (5) If the applicant is a firm, partnership, association, or
29 corporation, the chief executive officer or other person serving in
30 that capacity.

31 (6) Additional officers of the governing body of the applicant,
32 or other persons with a financial interest in the applicant, as
33 determined necessary by the department by regulation. The criteria
34 used in the development of these regulations shall be based on the
35 person's capability to exercise substantial influence over the
36 operation of the facility.

37 (c) (1) (A) Subsequent to initial licensure, a person specified
38 in subdivision (b) and not exempted from fingerprinting shall
39 obtain either a criminal record clearance or an exemption from
40 disqualification, pursuant to subdivision (f), from the State

1 Department of Social Services prior to employment, residence, or
2 initial presence in the facility. A person specified in subdivision
3 (b) who is not exempt from fingerprinting shall be fingerprinted
4 and shall sign a declaration under penalty of perjury regarding any
5 prior criminal convictions. The licensee shall submit fingerprint
6 images and related information to the Department of Justice and
7 the Federal Bureau of Investigation, through the Department of
8 Justice, for a state and federal level criminal offender record
9 information search, or to comply with paragraph (1) of subdivision
10 (g), prior to the person's employment, residence, or initial presence
11 in the residential care facility.

12 (B) These fingerprint images and related information shall be
13 electronically submitted to the Department of Justice in a manner
14 approved by the State Department of Social Services and the
15 Department of Justice, for the purpose of obtaining a permanent
16 set of fingerprints. A licensee's failure to submit fingerprint images
17 and related information to the Department of Justice, or to comply
18 with paragraph (1) of subdivision (g), as required in this section,
19 shall result in the citation of a deficiency and an immediate
20 assessment of civil penalties in the amount of one hundred dollars
21 (\$100) per violation per day for a maximum of five days, unless
22 the violation is a second or subsequent violation within a 12-month
23 period in which case the civil penalties shall be in the amount of
24 one hundred dollars (\$100) per violation for a maximum of 30
25 days, and shall be grounds for disciplining the licensee pursuant
26 to Section 1568.082. The State Department of Social Services may
27 assess civil penalties for continued violations as allowed in Section
28 1568.0822. The fingerprint images and related information shall
29 then be submitted to the Department of Justice for processing. The
30 licensee shall maintain and make available for inspection
31 documentation of the individual's clearance or exemption.

32 (2) A violation of the regulations adopted pursuant to Section
33 1522.04 shall result in the citation of a deficiency and an immediate
34 assessment of civil penalties in the amount of one hundred dollars
35 (\$100) per violation per day for a maximum of five days, unless
36 the violation is a second or subsequent violation within a 12-month
37 period in which case the civil penalties shall be in the amount of
38 one hundred dollars (\$100) per violation for a maximum of 30
39 days, and shall be grounds for disciplining the licensee pursuant

1 to Section 1568.082. The department may assess civil penalties
2 for continued violations as permitted by Section 1568.0822.

3 (3) Within 14 calendar days of the receipt of the fingerprint
4 images, the Department of Justice shall notify the State Department
5 of Social Services of the criminal record information, as provided
6 for in this subdivision. If no criminal record information has been
7 recorded, the Department of Justice shall provide the licensee and
8 the State Department of Social Services with a statement of that
9 fact within 14 calendar days of receipt of the fingerprint images.
10 If new fingerprint images are required for processing, the
11 Department of Justice shall, within 14 calendar days from the date
12 of receipt of the fingerprint images, notify the licensee that the
13 fingerprint images were illegible. The Department of Justice shall
14 notify the department, as required by Section 1522.04, and shall
15 notify the licensee by mail within 14 days of electronic
16 transmission of the fingerprint images to the Department of Justice,
17 if the person has no criminal history record.

18 (4) Except for persons specified in paragraph (2) of subdivision
19 (b), the licensee shall endeavor to ascertain the previous
20 employment history of persons required to be fingerprinted under
21 this subdivision. If it is determined by the State Department of
22 Social Services, on the basis of the fingerprint images submitted
23 to the Department of Justice, that the person has been convicted
24 of a sex offense against a minor, an offense specified in Section
25 243.4, 273a, 273ab, 273d, 273g, or 368 of the Penal Code, or a
26 felony, the department shall notify the licensee to act immediately
27 to terminate the person's employment, remove the person from
28 the residential care facility, or bar the person from entering the
29 residential care facility. The department may subsequently grant
30 an exemption pursuant to subdivision (f). If the conviction was for
31 another crime, except a minor traffic violation, the licensee shall,
32 upon notification by the department, act immediately to either (A)
33 terminate the person's employment, remove the person from the
34 residential care facility, or bar the person from entering the
35 residential care facility; or (B) seek an exemption pursuant to
36 subdivision (f). The department shall determine if the person shall
37 be allowed to remain in the facility until a decision on the
38 exemption is rendered. A licensee's failure to comply with the
39 department's prohibition of employment, contact with clients, or
40 presence in the facility as required by this paragraph shall result

1 in a citation of deficiency and an immediate assessment of civil
2 penalties by the department against the licensee, in the amount of
3 one hundred dollars (\$100) per violation per day for a maximum
4 of five days, unless the violation is a second or subsequent violation
5 within a 12-month period in which case the civil penalties shall
6 be in the amount of one hundred dollars (\$100) per violation for
7 a maximum of 30 days, and shall be grounds for disciplining the
8 licensee pursuant to Section 1568.082.

9 (5) The department may issue an exemption on its own motion
10 pursuant to subdivision (f) if the person's criminal history indicates
11 that the person is of good character based on the age, seriousness,
12 and frequency of the conviction or convictions. The department,
13 in consultation with interested parties, shall develop regulations
14 to establish the criteria to grant an exemption pursuant to this
15 paragraph.

16 (6) Concurrently with notifying the licensee pursuant to
17 paragraph (4), the department shall notify the affected individual
18 of his or her right to seek an exemption pursuant to subdivision
19 (f). The individual may seek an exemption only if the licensee
20 terminates the person's employment or removes the person from
21 the facility after receiving notice from the department pursuant to
22 paragraph (4).

23 (d) (1) For purposes of this section or any other provision of
24 this chapter, a conviction means a plea or verdict of guilty or a
25 conviction following a plea of nolo contendere. An action that the
26 department is permitted to take following the establishment of a
27 conviction may be taken when the time for appeal has elapsed,
28 when the judgment of conviction has been affirmed on appeal, or
29 when an order granting probation is made suspending the
30 imposition of the sentence, notwithstanding a subsequent order
31 pursuant to Sections 1203.4 and 1203.4a of the Penal Code
32 permitting that person to withdraw his or her plea of guilty and to
33 enter a plea of not guilty, setting aside the verdict of guilty, or
34 dismissing the accusation, information, or indictment. For purposes
35 of this chapter, the record of a conviction, or a copy thereof
36 certified by the clerk of the court or by a judge of the court in
37 which the conviction occurred, shall be conclusive evidence of the
38 conviction. For purposes of this section or any other provision of
39 this chapter, the arrest disposition report certified by the
40 Department of Justice, or documents admissible in a criminal action

1 pursuant to Section 969b of the Penal Code, shall be prima facie
2 evidence of the conviction, notwithstanding any other provision
3 of law prohibiting the admission of these documents in a civil or
4 administrative action.

5 (2) For purposes of this section or any other provision of this
6 chapter, the department shall consider criminal convictions from
7 another state or federal court as if the criminal offense was
8 committed in this state.

9 (e) (1) The State Department of Social Services shall not use
10 a record of arrest to deny, revoke, or terminate any application,
11 license, employment, or residence unless the department
12 investigates the incident and secures evidence, whether or not
13 related to the incident of arrest, that is admissible in an
14 administrative hearing to establish conduct by the person that may
15 pose a risk to the health and safety of any person who is or may
16 become a client.

17 (2) The department shall not issue a criminal record clearance
18 to a person who has been arrested for any crime specified in Section
19 290 of the Penal Code, for violating Section 245, 273ab, or 273.5,
20 or subdivision (b) of Section 273a, of the Penal Code, or, prior to
21 January 1, 1994, paragraph (2) of Section 273a of the Penal Code,
22 or for any crime for which the department is prohibited from
23 granting a criminal record exemption pursuant to subdivision (f),
24 prior to the department's completion of an investigation pursuant
25 to paragraph (1).

26 (3) The State Department of Social Services is authorized to
27 obtain arrest or conviction records or reports from a law
28 enforcement agency as necessary to the performance of its duties
29 to inspect, license, and investigate community care facilities and
30 individuals associated with a community care facility.

31 (f) (1) After review of the record, the director may grant an
32 exemption from disqualification for a license as specified in
33 paragraphs (1) and (4) of subdivision (a), or for employment,
34 residence, or presence in a residential care facility as specified in
35 paragraphs (4), (5), and (6) of subdivision (c) if the director has
36 substantial and convincing evidence to support a reasonable belief
37 that the applicant and the person convicted of the crime, if other
38 than the applicant, are of such good character as to justify issuance
39 of the license or special permit or granting an exemption for
40 purposes of subdivision (c). However, an exemption shall not be

1 granted pursuant to this subdivision if the conviction was for any
2 of the following offenses:

3 (A) An offense specified in Section 220, 243.4, or 264.1,
4 subdivision (a) of Section 273a, or, prior to January 1, 1994,
5 paragraph (1) of Section 273a, Section 273ab, 273d, 288, or 289,
6 subdivision (c) of Section 290, or Section 368, of the Penal Code,
7 or was a conviction of another crime against an individual specified
8 in subdivision (c) of Section 667.5 of the Penal Code.

9 (B) A felony offense specified in Section 729 of the Business
10 and Professions Code or Section 206 or 215, subdivision (a) of
11 Section 347, subdivision (b) of Section 417, or subdivision (a) of
12 Section 451 of the Penal Code.

13 (2) The department shall not prohibit a person from being
14 employed or having contact with clients in a facility on the basis
15 of a denied criminal record exemption request or arrest information
16 unless the department complies with Section 1568.092.

17 (g) (1) For purposes of compliance with this section, the
18 department may permit an individual to transfer a current criminal
19 record clearance, as defined in subdivision (a), from one facility
20 to another, as long as the criminal record clearance has been
21 processed through a state licensing district office, and is being
22 transferred to another facility licensed by a state licensing district
23 office. The request shall be in writing to the department, and shall
24 include a copy of the person's driver's license or valid
25 identification card issued by the Department of Motor Vehicles,
26 or a valid photo identification issued by another state or the United
27 States government if the person is not a California resident. Upon
28 request of the licensee, who shall enclose a self-addressed stamped
29 envelope for this purpose, the department shall verify whether the
30 individual has a clearance that can be transferred.

31 (2) The State Department of Social Services shall hold criminal
32 record clearances in its active files for a minimum of two years
33 after an employee is no longer employed at a licensed facility in
34 order for the criminal record clearance to be transferred.

35 (h) If a licensee or facility is required by law to deny
36 employment or to terminate employment of any employee based
37 on written notification from the state department that the employee
38 has a prior criminal conviction or is determined unsuitable for
39 employment under Section 1568.092, the licensee or facility shall

1 not incur civil liability or unemployment insurance liability as a
2 result of that denial or termination.

3 (i) (1) The Department of Justice shall charge a fee sufficient
4 to cover its cost in providing services to comply with the 14-day
5 requirement contained in subdivision (c) for provision to the
6 department of criminal record information.

7 (2) Paragraph (1) shall cease to be implemented when the
8 department adopts emergency regulations pursuant to Section
9 1522.04, and shall become inoperative when permanent regulations
10 are adopted under that section.

11 (j) Notwithstanding any other law, the department may provide
12 an individual with a copy of his or her state or federal level criminal
13 offender record information search response as provided to that
14 department by the Department of Justice if the department has
15 denied a criminal background clearance based on this information
16 and the individual makes a written request to the department for
17 a copy specifying an address to which it is to be sent. The state or
18 federal level criminal offender record information search response
19 shall not be modified or altered from its form or content as provided
20 by the Department of Justice and shall be provided to the address
21 specified by the individual in his or her written request. The
22 department shall retain a copy of the individual's written request
23 and the response and date provided.

24 SEC. 3. Section 1569.17 of the Health and Safety Code is
25 amended to read:

26 1569.17. The Legislature recognizes the need to generate timely
27 and accurate positive fingerprint identification of applicants as a
28 condition of issuing licenses, permits, or certificates of approval
29 for persons to operate or provide direct care services in a residential
30 care facility for the elderly. It is the intent of the Legislature in
31 enacting this section to require the fingerprints of those individuals
32 whose contact with clients of residential care facilities for the
33 elderly may pose a risk to the clients' health and safety. An
34 individual shall be required to obtain either a criminal record
35 clearance or a criminal record exemption from the State Department
36 of Social Services before his or her initial presence in a residential
37 care facility for the elderly.

38 (a) (1) Before and, as applicable, subsequent to issuing a license
39 to any person or persons to operate or manage a residential care
40 facility for the elderly, the department shall secure from an

1 appropriate law enforcement agency a criminal record to determine
2 whether the applicant or any other person specified in subdivision
3 (b) has ever been convicted of a crime other than a minor traffic
4 violation or arrested for any crime specified in subdivision (c) of
5 Section 290 of the Penal Code, or for violating Section 245, 273*ab*,
6 or 273.5, subdivision (b) of Section 273a, or, prior to January 1,
7 1994, paragraph (2) of Section 273a, of the Penal Code, or for any
8 crime for which the department is prohibited from granting a
9 criminal record exemption pursuant to subdivision (f).

10 (2) The criminal history information shall include the full
11 criminal record, if any, of those persons, and subsequent arrest
12 information pursuant to Section 11105.2 of the Penal Code.

13 (3) The following shall apply to the criminal record information:

14 (A) If the State Department of Social Services finds that the
15 applicant or any other person specified in subdivision (b) has been
16 convicted of a crime, other than a minor traffic violation, the
17 application or presence shall be denied, unless the director grants
18 an exemption pursuant to subdivision (f).

19 (B) If the State Department of Social Services finds that the
20 applicant, or any other person specified in subdivision (b), is
21 awaiting trial for a crime other than a minor traffic violation, the
22 State Department of Social Services may cease processing the
23 criminal record information until the conclusion of the trial.

24 (C) If no criminal record information has been recorded, the
25 Department of Justice shall provide the applicant and the State
26 Department of Social Services with a statement of that fact.

27 (D) If the State Department of Social Services finds after
28 licensure that the licensee, or any other person specified in
29 paragraph (2) of subdivision (b), has been convicted of a crime
30 other than a minor traffic violation, the license may be revoked,
31 unless the director grants an exemption pursuant to subdivision
32 (f).

33 (E) An applicant and any other person specified in subdivision
34 (b) shall submit fingerprint images and related information to the
35 Department of Justice and the Federal Bureau of Investigation,
36 through the Department of Justice, for a state and federal level
37 criminal offender record information search, in addition to the
38 search required by subdivision (a). If an applicant meets all other
39 conditions for licensure, except receipt of the Federal Bureau of
40 Investigation's criminal history information for the applicant and

1 persons listed in subdivision (b), the department may issue a license
2 if the applicant and each person described by subdivision (b) has
3 signed and submitted a statement that he or she has never been
4 convicted of a crime in the United States, other than a traffic
5 infraction as defined in paragraph (1) of subdivision (a) of Section
6 42001 of the Vehicle Code. If, after licensure, the department
7 determines that the licensee or person specified in subdivision (b)
8 has a criminal record, the license may be revoked pursuant to
9 Section 1569.50. The department may also suspend the license
10 pending an administrative hearing pursuant to Sections 1569.50
11 and 1569.51.

12 (b) In addition to the applicant, the provisions of this section
13 shall apply to criminal record clearances and exemptions for the
14 following persons:

15 (1) (A) Adults responsible for administration or direct
16 supervision of staff.

17 (B) Any person, other than a client, residing in the facility.
18 Residents of unlicensed independent senior housing facilities that
19 are located in contiguous buildings on the same property as a
20 residential care facility for the elderly shall be exempt from these
21 requirements.

22 (C) Any person who provides client assistance in dressing,
23 grooming, bathing, or personal hygiene. Any nurse assistant or
24 home health aide meeting the requirements of Section 1338.5 or
25 1736.6, respectively, who is not employed, retained, or contracted
26 by the licensee, and who has been certified or recertified on or
27 after July 1, 1998, shall be deemed to meet the criminal record
28 clearance requirements of this section. A certified nurse assistant
29 and certified home health aide who will be providing client
30 assistance and who falls under this exemption shall provide one
31 copy of his or her current certification, prior to providing care, to
32 the residential care facility for the elderly. The facility shall
33 maintain the copy of the certification on file as long as the care is
34 being provided by the certified nurse assistant or certified home
35 health aide at the facility. Nothing in this paragraph restricts the
36 right of the department to exclude a certified nurse assistant or
37 certified home health aide from a licensed residential care facility
38 for the elderly pursuant to Section 1569.58.

39 (D) Any staff person, volunteer, or employee who has contact
40 with the clients.

1 (E) If the applicant is a firm, partnership, association, or
2 corporation, the chief executive officer or other person serving in
3 a similar capacity.

4 (F) Additional officers of the governing body of the applicant
5 or other persons with a financial interest in the applicant, as
6 determined necessary by the department by regulation. The criteria
7 used in the development of these regulations shall be based on the
8 person's capability to exercise substantial influence over the
9 operation of the facility.

10 (2) The following persons are exempt from requirements
11 applicable under paragraph (1):

12 (A) A spouse, relative, significant other, or close friend of a
13 client shall be exempt if this person is visiting the client or provides
14 direct care and supervision to that client only.

15 (B) A volunteer to whom all of the following apply:

16 (i) The volunteer is at the facility during normal waking hours.

17 (ii) The volunteer is directly supervised by the licensee or a
18 facility employee with a criminal record clearance or exemption.

19 (iii) The volunteer spends no more than 16 hours per week at
20 the facility.

21 (iv) The volunteer does not provide clients with assistance in
22 dressing, grooming, bathing, or personal hygiene.

23 (v) The volunteer is not left alone with clients in care.

24 (C) A third-party contractor retained by the facility if the
25 contractor is not left alone with clients in care.

26 (D) A third-party contractor or other business professional
27 retained by a client and at the facility at the request or by
28 permission of that client. These individuals shall not be left alone
29 with other clients.

30 (E) Licensed or certified medical professionals are exempt from
31 fingerprint and criminal background check requirements imposed
32 by community care licensing. This exemption does not apply to a
33 person who is a community care facility licensee or an employee
34 of the facility.

35 (F) Employees of licensed home health agencies and members
36 of licensed hospice interdisciplinary teams who have contact with
37 a resident of a residential care facility at the request of the resident
38 or resident's legal decisionmaker are exempt from fingerprint and
39 criminal background check requirements imposed by community

1 care licensing. This exemption does not apply to a person who is
2 a community care facility licensee or an employee of the facility.

3 (G) Clergy and other spiritual caregivers who are performing
4 services in common areas of the residential care facility, or who
5 are advising an individual resident at the request of, or with
6 permission of, the resident, are exempt from fingerprint and
7 criminal background check requirements imposed by community
8 care licensing. This exemption does not apply to a person who is
9 a community care facility licensee or an employee of the facility.

10 (H) Any person similar to those described in this subdivision,
11 as defined by the department in regulations.

12 (I) Nothing in this paragraph shall prevent a licensee from
13 requiring a criminal record clearance of any individual exempt
14 from the requirements of this section, provided that the individual
15 has client contact.

16 (c) (1) (A) Subsequent to initial licensure, a person specified
17 in subdivision (b) who is not exempted from fingerprinting shall
18 obtain either a criminal record clearance or an exemption, pursuant
19 to subdivision (f), from the State Department of Social Services
20 prior to employment, residence, or initial presence in a facility. A
21 person specified in subdivision (b) who is not exempt from
22 fingerprinting shall be fingerprinted and shall sign a declaration
23 under penalty of perjury regarding any prior criminal convictions.
24 The licensee shall submit these fingerprint images and related
25 information to the Department of Justice and the Federal Bureau
26 of Investigation, through the Department of Justice, for a state and
27 federal level criminal offender record information search, or to
28 comply with paragraph (1) of subdivision (g) prior to the person's
29 employment, residence, or initial presence in the residential care
30 facility for the elderly.

31 (B) These fingerprint images and related information shall be
32 electronically transmitted in a manner approved by the State
33 Department of Social Services and the Department of Justice. A
34 licensee's failure to submit fingerprint images and related
35 information to the Department of Justice, or to comply with
36 paragraph (1) of subdivision (g), as required in this section, shall
37 result in the citation of a deficiency and an immediate assessment
38 of civil penalties in the amount of one hundred dollars (\$100) per
39 violation per day for a maximum of five days, unless the violation
40 is a second or subsequent violation within a 12-month period in

1 which case the civil penalties shall be in the amount of one hundred
2 dollars (\$100) per violation for a maximum of 30 days, and shall
3 be grounds for disciplining the licensee pursuant to Section
4 1569.50. The State Department of Social Services may assess civil
5 penalties for continued violations as permitted by Section 1569.49.
6 The licensee shall then submit these fingerprint images to the State
7 Department of Social Services for processing. Documentation of
8 the individual's clearance or exemption shall be maintained by the
9 licensee and be available for inspection. The Department of Justice
10 shall notify the department, as required by Section 1522.04, and
11 notify the licensee by mail within 14 days of electronic
12 transmission of the fingerprints to the Department of Justice, if
13 the person has no criminal record. A violation of the regulations
14 adopted pursuant to Section 1522.04 shall result in the citation of
15 a deficiency and an immediate assessment of civil penalties in the
16 amount of one hundred dollars (\$100) per violation per day for a
17 maximum of five days, unless the violation is a second or
18 subsequent violation within a 12-month period in which case the
19 civil penalties shall be in the amount of one hundred dollars (\$100)
20 per violation for a maximum of 30 days, and shall be grounds for
21 disciplining the licensee pursuant to Section 1569.50. The
22 department may assess civil penalties for continued violations as
23 permitted by Section 1569.49.

24 (2) Within 14 calendar days of the receipt of the fingerprint
25 images, the Department of Justice shall notify the State Department
26 of Social Services of the criminal record information, as provided
27 for in this subdivision. If no criminal record information has been
28 recorded, the Department of Justice shall provide the licensee and
29 the State Department of Social Services with a statement of that
30 fact within 14 calendar days of receipt of the fingerprint images.
31 If new fingerprint images are required for processing, the
32 Department of Justice shall, within 14 calendar days from the date
33 of receipt of the fingerprint images, notify the licensee that the
34 fingerprint images were illegible.

35 (3) Except for persons specified in paragraph (2) of subdivision
36 (b), the licensee shall endeavor to ascertain the previous
37 employment history of persons required to be fingerprinted under
38 this subdivision. If the State Department of Social Services
39 determines, on the basis of the fingerprint images submitted to the
40 Department of Justice, that the person has been convicted of a sex

1 offense against a minor, an offense specified in Section 243.4,
2 273a, 273ab, 273d, 273g, or 368 of the Penal Code, or a felony,
3 the State Department of Social Services shall notify the licensee
4 in writing within 15 calendar days of the receipt of the notification
5 from the Department of Justice to act immediately to terminate
6 the person's employment, remove the person from the residential
7 care facility for the elderly, or bar the person from entering the
8 residential care facility for the elderly. The State Department of
9 Social Services may subsequently grant an exemption pursuant to
10 subdivision (f). If the conviction was for another crime, except a
11 minor traffic violation, the licensee shall, upon notification by the
12 State Department of Social Services, act immediately to either (1)
13 terminate the person's employment, remove the person from the
14 residential care facility for the elderly, or bar the person from
15 entering the residential care facility for the elderly or (2) seek an
16 exemption pursuant to subdivision (f). The department shall
17 determine if the person shall be allowed to remain in the facility
18 until a decision on the exemption is rendered by the department.
19 A licensee's failure to comply with the department's prohibition
20 of employment, contact with clients, or presence in the facility as
21 required by this paragraph shall result in a citation of deficiency
22 and an immediate assessment of civil penalties by the department
23 against the licensee, in the amount of one hundred dollars (\$100)
24 per violation per day for a maximum of five days, unless the
25 violation is a second or subsequent violation within a 12-month
26 period in which case the civil penalties shall be in the amount of
27 one hundred dollars (\$100) per violation for a maximum of 30
28 days, and shall be grounds for disciplining the licensee pursuant
29 to Section 1569.50.

30 (4) The department may issue an exemption on its own motion
31 pursuant to subdivision (f) if the person's criminal history indicates
32 that the person is of good character based on the age, seriousness,
33 and frequency of the conviction or convictions. The department,
34 in consultation with interested parties, shall develop regulations
35 to establish the criteria to grant an exemption pursuant to this
36 paragraph.

37 (5) Concurrently with notifying the licensee pursuant to
38 paragraph (4), the department shall notify the affected individual
39 of his or her right to seek an exemption pursuant to subdivision
40 (f). The individual may seek an exemption only if the licensee

1 terminates the person's employment or removes the person from
2 the facility after receiving notice from the department pursuant to
3 paragraph (4).

4 (d) (1) For purposes of this section or any other provision of
5 this chapter, a conviction means a plea or verdict of guilty or a
6 conviction following a plea of nolo contendere. Any action that
7 the department is permitted to take following the establishment of
8 a conviction may be taken when the time for appeal has elapsed,
9 when the judgment of conviction has been affirmed on appeal or
10 when an order granting probation is made suspending the
11 imposition of the sentence, notwithstanding a subsequent order
12 pursuant to the provisions of Sections 1203.4 and 1203.4a of the
13 Penal Code permitting a person to withdraw his or her plea of
14 guilty and to enter a plea of not guilty, or setting aside the verdict
15 of guilty, or dismissing the accusation, information, or indictment.
16 For purposes of this section or any other provision of this chapter,
17 the record of a conviction, or a copy thereof certified by the clerk
18 of the court or by a judge of the court in which the conviction
19 occurred, shall be conclusive evidence of the conviction. For
20 purposes of this section or any other provision of this chapter, the
21 arrest disposition report certified by the Department of Justice or
22 documents admissible in a criminal action pursuant to Section
23 969b of the Penal Code shall be prima facie evidence of the
24 conviction, notwithstanding any other law prohibiting the
25 admission of these documents in a civil or administrative action.

26 (2) For purposes of this section or any other provision of this
27 chapter, the department shall consider criminal convictions from
28 another state or federal court as if the criminal offense was
29 committed in this state.

30 (e) (1) The State Department of Social Services shall not use
31 a record of arrest to deny, revoke, or terminate any application,
32 license, employment, or residence unless the department
33 investigates the incident and secures evidence, whether or not
34 related to the incident of arrest, that is admissible in an
35 administrative hearing to establish conduct by the person that may
36 pose a risk to the health and safety of any person who is or may
37 become a client.

38 (2) The department shall not issue a criminal record clearance
39 to a person who has been arrested for any crime specified in Section
40 290 of the Penal Code, or for violating Section 245, 273ab, or

1 273.5, *or* subdivision (b) of Section ~~273a~~, 273a of the Penal Code,
2 or, prior to January 1, 1994, paragraph (2) of Section 273a; of the
3 Penal Code, or for any crime for which the department is prohibited
4 from granting a record exemption pursuant to subdivision (f), prior
5 to the department's completion of an investigation pursuant to
6 paragraph (1).

7 (3) The State Department of Social Services is authorized to
8 obtain any arrest or conviction records or reports from any law
9 enforcement agency as necessary to the performance of its duties
10 to inspect, license, and investigate community care facilities and
11 individuals associated with a community care facility.

12 (f) (1) After review of the record, the director may grant an
13 exemption from disqualification for a license as specified in
14 paragraphs (1) and (4) of subdivision (a), or for employment,
15 residence, or presence in a residential care facility for the elderly
16 as specified in paragraphs (4), (5), and (6) of subdivision (c) if the
17 director has substantial and convincing evidence to support a
18 reasonable belief that the applicant and the person convicted of
19 the crime, if other than the applicant, are of such good character
20 as to justify issuance of the license or special permit or granting
21 an exemption for purposes of subdivision (c). However, an
22 exemption shall not be granted pursuant to this subdivision if the
23 conviction was for any of the following offenses:

24 (A) An offense specified in Section 220, 243.4, or 264.1,
25 subdivision (a) of Section 273a, or, prior to January 1, 1994,
26 paragraph (1) of Section 273a, Section 273ab, 273d, 288, or 289,
27 subdivision (c) of Section 290, or Section 368, of the Penal Code,
28 or was a conviction of another crime against an individual specified
29 in subdivision (c) of Section 667.5 of the Penal Code.

30 (B) A felony offense specified in Section 729 of the Business
31 and Professions Code or Section 206 or 215, subdivision (a) of
32 Section 347, subdivision (b) of Section 417, or subdivision (a) of
33 Section 451 of the Penal Code.

34 (2) The director shall notify in writing the licensee or the
35 applicant of his or her decision within 60 days of receipt of all
36 information from the applicant and other sources determined
37 necessary by the director for the rendering of a decision pursuant
38 to this subdivision.

39 (3) The department shall not prohibit a person from being
40 employed or having contact with clients in a facility on the basis

1 of a denied criminal record exemption request or arrest information
2 unless the department complies with the requirements of Section
3 1569.58.

4 (g) (1) For purposes of compliance with this section, the
5 department may permit an individual to transfer a current criminal
6 record clearance, as defined in subdivision (a), from one facility
7 to another, as long as the criminal record clearance has been
8 processed through a state licensing district office, and is being
9 transferred to another facility licensed by a state licensing district
10 office. The request shall be submitted in writing to the department,
11 and shall include a copy of the person's driver's license or valid
12 identification card issued by the Department of Motor Vehicles,
13 or a valid photo identification issued by another state or the United
14 States government if the person is not a California resident. Upon
15 request of the licensee, who shall enclose a self-addressed stamped
16 envelope for this purpose, the department shall verify whether the
17 individual has a clearance that can be transferred.

18 (2) The State Department of Social Services shall hold criminal
19 record clearances in its active files for a minimum of two years
20 after an employee is no longer employed at a licensed facility in
21 order for the criminal record clearances to be transferred under
22 this section.

23 (h) If a licensee or facility is required by law to deny
24 employment or to terminate employment of any employee based
25 on written notification from the department that the employee has
26 a prior criminal conviction or is determined unsuitable for
27 employment under Section 1569.58, the licensee or facility shall
28 not incur civil liability or unemployment insurance liability as a
29 result of that denial or termination.

30 (i) Notwithstanding any other law, the department may provide
31 an individual with a copy of his or her state or federal level criminal
32 offender record information search response as provided to that
33 department by the Department of Justice if the department has
34 denied a criminal background clearance based on this information
35 and the individual makes a written request to the department for
36 a copy specifying an address to which it is to be sent. The state or
37 federal level criminal offender record information search response
38 shall not be modified or altered from its form or content as provided
39 by the Department of Justice and shall be provided to the address
40 specified by the individual in his or her written request. The

1 department shall retain a copy of the individual's written request
2 and the response and date provided.

3 ~~SEC. 4. Section 1596.871 of the Health and Safety Code is~~
4 ~~amended to read:~~

5 ~~1596.871. The Legislature recognizes the need to generate~~
6 ~~timely and accurate positive fingerprint identification of applicants~~
7 ~~as a condition of issuing licenses, permits, or certificates of~~
8 ~~approval for persons to operate or provide direct care services in~~
9 ~~a child care center or family child care home. It is the intent of the~~
10 ~~Legislature in enacting this section to require the fingerprints of~~
11 ~~those individuals whose contact with child day care facility clients~~
12 ~~may pose a risk to the children's health and safety. An individual~~
13 ~~shall be required to obtain either a criminal record clearance or a~~
14 ~~criminal record exemption from the State Department of Social~~
15 ~~Services before his or her initial presence in a child day care~~
16 ~~facility.~~

17 ~~(a) (1) Before and, as applicable, subsequent to issuing a license~~
18 ~~or special permit to any person to operate or manage a day care~~
19 ~~facility, the department shall secure from an appropriate law~~
20 ~~enforcement agency a criminal record to determine whether the~~
21 ~~applicant or any other person specified in subdivision (b) has ever~~
22 ~~been convicted of a crime other than a minor traffic violation or~~
23 ~~arrested for any crime specified in subdivision (c) of Section 290~~
24 ~~of the Penal Code, or for violating Section 245 or 273.5,~~
25 ~~subdivision (b) of Section 273a, or, prior to January 1, 1994,~~
26 ~~paragraph (2) of Section 273a, of the Penal Code, or for any crime~~
27 ~~for which the department is prohibited from granting a criminal~~
28 ~~record exemption pursuant to subdivision (f).~~

29 ~~(2) The criminal history information shall include the full~~
30 ~~criminal record, if any, of those persons, and subsequent arrest~~
31 ~~information pursuant to Section 11105.2 of the Penal Code.~~

32 ~~(3) Except during the 2003-04 to the 2014-15 fiscal years,~~
33 ~~inclusive, neither the Department of Justice nor the department~~
34 ~~may charge a fee for the fingerprinting of an applicant who will~~
35 ~~serve six or fewer children or any family day care applicant for a~~
36 ~~license, or for obtaining a criminal record of an applicant pursuant~~
37 ~~to this section.~~

38 ~~(4) The following shall apply to the criminal record information:~~

39 ~~(A) If the State Department of Social Services finds that the~~
40 ~~applicant or any other person specified in subdivision (b) has been~~

1 convicted of a crime, other than a minor traffic violation, the
2 application shall be denied, unless the director grants an exemption
3 pursuant to subdivision (f).

4 (B) If the State Department of Social Services finds that the
5 applicant, or any other person specified in subdivision (b), is
6 awaiting trial for a crime other than a minor traffic violation, the
7 State Department of Social Services may cease processing the
8 criminal record information until the conclusion of the trial.

9 (C) If no criminal record information has been recorded, the
10 Department of Justice shall provide the applicant and the State
11 Department of Social Services with a statement of that fact.

12 (D) If the State Department of Social Services finds after
13 licensure that the licensee, or any other person specified in
14 paragraph (2) of subdivision (b), has been convicted of a crime
15 other than a minor traffic violation, the license may be revoked;
16 unless the director grants an exemption pursuant to subdivision
17 (f).

18 (E) An applicant and any other person specified in subdivision
19 (b) shall submit fingerprint images and related information to the
20 Department of Justice and the Federal Bureau of Investigation,
21 through the Department of Justice, for a state and federal level
22 criminal offender record information search, in addition to the
23 search required by subdivision (a). If an applicant meets all other
24 conditions for licensure, except receipt of the Federal Bureau of
25 Investigation's criminal history information for the applicant and
26 persons listed in subdivision (b), the department may issue a license
27 if the applicant and each person described by subdivision (b) has
28 signed and submitted a statement that he or she has never been
29 convicted of a crime in the United States, other than a traffic
30 infraction as defined in paragraph (1) of subdivision (a) of Section
31 42001 of the Vehicle Code. If, after licensure, the department
32 determines that the licensee or person specified in subdivision (b)
33 has a criminal record, the license may be revoked pursuant to
34 Section 1596.885. The department may also suspend the license
35 pending an administrative hearing pursuant to Section 1596.886.

36 (b) (1) In addition to the applicant, this section shall be
37 applicable to criminal record clearances and exemptions for the
38 following persons:

39 (A) Adults responsible for administration or direct supervision
40 of staff.

1 ~~(B) Any person, other than a child, residing in the facility.~~

2 ~~(C) Any person who provides care and supervision to the~~
3 ~~children.~~

4 ~~(D) Any staff person, volunteer, or employee who has contact~~
5 ~~with the children.~~

6 ~~(i) A volunteer providing time-limited specialized services shall~~
7 ~~be exempt from the requirements of this subdivision if this person~~
8 ~~is directly supervised by the licensee or a facility employee with~~
9 ~~a criminal record clearance or exemption, the volunteer spends no~~
10 ~~more than 16 hours per week at the facility, and the volunteer is~~
11 ~~not left alone with children in care.~~

12 ~~(ii) A student enrolled or participating at an accredited~~
13 ~~educational institution shall be exempt from the requirements of~~
14 ~~this subdivision if the student is directly supervised by the licensee~~
15 ~~or a facility employee with a criminal record clearance or~~
16 ~~exemption, the facility has an agreement with the educational~~
17 ~~institution concerning the placement of the student, the student~~
18 ~~spends no more than 16 hours per week at the facility, and the~~
19 ~~student is not left alone with children in care.~~

20 ~~(iii) A volunteer who is a relative, legal guardian, or foster parent~~
21 ~~of a client in the facility shall be exempt from the requirements of~~
22 ~~this subdivision.~~

23 ~~(iv) A contracted repair person retained by the facility, if not~~
24 ~~left alone with children in care, shall be exempt from the~~
25 ~~requirements of this subdivision.~~

26 ~~(v) Any person similar to those described in this subdivision,~~
27 ~~as defined by the department in regulations.~~

28 ~~(E) If the applicant is a firm, partnership, association, or~~
29 ~~corporation, the chief executive officer, other person serving in~~
30 ~~like capacity, or a person designated by the chief executive officer~~
31 ~~as responsible for the operation of the facility, as designated by~~
32 ~~the applicant agency.~~

33 ~~(F) If the applicant is a local educational agency, the president~~
34 ~~of the governing board, the school district superintendent, or a~~
35 ~~person designated to administer the operation of the facility, as~~
36 ~~designated by the local educational agency.~~

37 ~~(G) Additional officers of the governing body of the applicant,~~
38 ~~or other persons with a financial interest in the applicant, as~~
39 ~~determined necessary by the department by regulation. The criteria~~
40 ~~used in the development of these regulations shall be based on the~~

1 person's capability to exercise substantial influence over the
2 operation of the facility.

3 ~~(H) This section does not apply to employees of child care and~~
4 ~~development programs under contract with the State Department~~
5 ~~of Education who have completed a criminal record clearance as~~
6 ~~part of an application to the Commission on Teacher Credentialing,~~
7 ~~and who possess a current credential or permit issued by the~~
8 ~~commission, including employees of child care and development~~
9 ~~programs that serve both children subsidized under, and children~~
10 ~~not subsidized under, a State Department of Education contract.~~
11 ~~The Commission on Teacher Credentialing shall notify the~~
12 ~~department upon revocation of a current credential or permit issued~~
13 ~~to an employee of a child care and development program under~~
14 ~~contract with the State Department of Education.~~

15 ~~(I) This section does not apply to employees of a child care and~~
16 ~~development program operated by a school district, county office~~
17 ~~of education, or community college district under contract with~~
18 ~~the State Department of Education who have completed a criminal~~
19 ~~record clearance as a condition of employment. The school district,~~
20 ~~county office of education, or community college district upon~~
21 ~~receiving information that the status of an employee's criminal~~
22 ~~record clearance has changed shall submit that information to the~~
23 ~~department.~~

24 ~~(2) Nothing in this subdivision shall prevent a licensee from~~
25 ~~requiring a criminal record clearance of any individuals exempt~~
26 ~~from the requirements under this subdivision.~~

27 ~~(e) (1) (A) Subsequent to initial licensure, a person specified~~
28 ~~in subdivision (b) who is not exempt from fingerprinting shall~~
29 ~~obtain either a criminal record clearance or an exemption from~~
30 ~~disqualification, pursuant to subdivision (f), from the State~~
31 ~~Department of Social Services prior to employment, residence, or~~
32 ~~initial presence in the facility. A person specified in subdivision~~
33 ~~(b) who is not exempt from fingerprinting shall be fingerprinted~~
34 ~~and shall sign a declaration under penalty of perjury regarding any~~
35 ~~prior criminal convictions. The licensee shall submit fingerprint~~
36 ~~images and related information to the Department of Justice and~~
37 ~~the Federal Bureau of Investigation, through the Department of~~
38 ~~Justice, or to comply with paragraph (1) of subdivision (h), prior~~
39 ~~to the person's employment, residence, or initial presence in the~~
40 ~~child day care facility.~~

1 ~~(B) These fingerprint images for the purpose of obtaining a~~
2 ~~permanent set of fingerprints shall be electronically submitted to~~
3 ~~the Department of Justice in a manner approved by the State~~
4 ~~Department of Social Services and to the Department of Justice,~~
5 ~~or to comply with paragraph (1) of subdivision (h), as required in~~
6 ~~this section, shall result in the citation of a deficiency, and an~~
7 ~~immediate assessment of civil penalties in the amount of one~~
8 ~~hundred dollars (\$100) per violation per day for a maximum of~~
9 ~~five days, unless the violation is a second or subsequent violation~~
10 ~~within a 12-month period in which case the civil penalties shall~~
11 ~~be in the amount of one hundred dollars (\$100) per violation for~~
12 ~~a maximum of 30 days, and shall be grounds for disciplining the~~
13 ~~licensee pursuant to Section 1596.885 or 1596.886. The State~~
14 ~~Department of Social Services may assess civil penalties for~~
15 ~~continued violations permitted by Sections 1596.99 and 1597.62.~~
16 ~~The fingerprint images and related information shall then be~~
17 ~~submitted to the department for processing. Within 14 calendar~~
18 ~~days of the receipt of the fingerprint images, the Department of~~
19 ~~Justice shall notify the State Department of Social Services of the~~
20 ~~criminal record information, as provided in this subdivision. If no~~
21 ~~criminal record information has been recorded, the Department of~~
22 ~~Justice shall provide the licensee and the State Department of~~
23 ~~Social Services with a statement of that fact within 14 calendar~~
24 ~~days of receipt of the fingerprint images. If new fingerprint images~~
25 ~~are required for processing, the Department of Justice shall, within~~
26 ~~14 calendar days from the date of receipt of the fingerprint images,~~
27 ~~notify the licensee that the fingerprints were illegible.~~

28 ~~(C) Documentation of the individual's clearance or exemption~~
29 ~~shall be maintained by the licensee, and shall be available for~~
30 ~~inspection. When live-scan technology is operational, as defined~~
31 ~~in Section 1522.04, the Department of Justice shall notify the~~
32 ~~department, as required by that section, and notify the licensee by~~
33 ~~mail within 14 days of electronic transmission of the fingerprints~~
34 ~~to the Department of Justice, if the person has no criminal record.~~
35 ~~Any violation of the regulations adopted pursuant to Section~~
36 ~~1522.04 shall result in the citation of a deficiency and an immediate~~
37 ~~assessment of civil penalties in the amount of one hundred dollars~~
38 ~~(\$100) per violation per day for a maximum of five days, unless~~
39 ~~the violation is a second or subsequent violation within a 12-month~~
40 ~~period in which case the civil penalties shall be in the amount of~~

1 one hundred dollars (\$100) per violation for a maximum of 30
2 days, and shall be grounds for disciplining the licensee pursuant
3 to Section 1596.885 or 1596.886. The department may assess civil
4 penalties for continued violations, as permitted by Sections 1596.99
5 and 1597.62.

6 (2) Except for persons specified in paragraph (2) of subdivision
7 (b), the licensee shall endeavor to ascertain the previous
8 employment history of persons required to be fingerprinted under
9 this subdivision. If it is determined by the department, on the basis
10 of fingerprints submitted to the Department of Justice, that the
11 person has been convicted of a sex offense against a minor, an
12 offense specified in Section 243.4, 273a, 273d, 273g, or 368 of
13 the Penal Code, or a felony, the State Department of Social
14 Services shall notify the licensee to act immediately to terminate
15 the person's employment, remove the person from the child day
16 care facility, or bar the person from entering the child day care
17 facility. The department may subsequently grant an exemption
18 pursuant to subdivision (f). If the conviction was for another crime
19 except a minor traffic violation, the licensee shall, upon notification
20 by the State Department of Social Services, act immediately to
21 either (1) terminate the person's employment, remove the person
22 from the child day care facility, or bar the person from entering
23 the child day care facility; or (2) seek an exemption pursuant to
24 subdivision (f). The department shall determine if the person shall
25 be allowed to remain in the facility until a decision on the
26 exemption is rendered. A licensee's failure to comply with the
27 department's prohibition of employment, contact with clients, or
28 presence in the facility as required by this paragraph shall result
29 in a citation of deficiency and an immediate assessment of civil
30 penalties by the department against the licensee, in the amount of
31 one hundred dollars (\$100) per violation per day for a maximum
32 of five days, unless the violation is a second or subsequent violation
33 within a 12-month period in which case the civil penalties shall
34 be in the amount of one hundred dollars (\$100) per violation for
35 a maximum of 30 days, and shall be grounds for disciplining the
36 licensee pursuant to Section 1596.885 or 1596.886.

37 (3) The department may issue an exemption on its own motion
38 pursuant to subdivision (f) if the person's criminal history indicates
39 that the person is of good character based on the age, seriousness,
40 and frequency of the conviction or convictions. The department,

1 in consultation with interested parties, shall develop regulations
2 to establish the criteria to grant an exemption pursuant to this
3 paragraph.

4 (4) Concurrently with notifying the licensee pursuant to
5 paragraph (3), the department shall notify the affected individual
6 of his or her right to seek an exemption pursuant to subdivision
7 (f). The individual may seek an exemption only if the licensee
8 terminates the person's employment or removes the person from
9 the facility after receiving notice from the department pursuant to
10 paragraph (3).

11 (d) (1) For purposes of this section or any other provision of
12 this chapter, a conviction means a plea or verdict of guilty or a
13 conviction following a plea of nolo contendere. Any action that
14 the department is permitted to take following the establishment of
15 a conviction may be taken when the time for appeal has elapsed,
16 when the judgment of conviction has been affirmed on appeal, or
17 when an order granting probation is made suspending the
18 imposition of sentence, notwithstanding a subsequent order
19 pursuant to Sections 1203.4 and 1203.4a of the Penal Code
20 permitting the person to withdraw his or her plea of guilty and to
21 enter a plea of not guilty, or setting aside the verdict of guilty, or
22 dismissing the accusation, information, or indictment. For purposes
23 of this section or any other provision of this chapter, the record of
24 a conviction, or a copy thereof certified by the clerk of the court
25 or by a judge of the court in which the conviction occurred, shall
26 be conclusive evidence of the conviction. For purposes of this
27 section or any other provision of this chapter, the arrest disposition
28 report certified by the Department of Justice, or documents
29 admissible in a criminal action pursuant to Section 969b of the
30 Penal Code, shall be prima facie evidence of conviction,
31 notwithstanding any other law prohibiting the admission of these
32 documents in a civil or administrative action.

33 (2) For purposes of this section or any other provision of this
34 chapter, the department shall consider criminal convictions from
35 another state or federal court as if the criminal offense was
36 committed in this state.

37 (e) (1) The State Department of Social Services shall not use
38 a record of arrest to deny, revoke, or terminate any application,
39 license, employment, or residence unless the department
40 investigates the incident and secures evidence, whether or not

1 related to the incident of arrest, that is admissible in an
2 administrative hearing to establish conduct by the person that may
3 pose a risk to the health and safety of any person who is or may
4 become a client.

5 (2) The department shall not issue a criminal record clearance
6 to a person who has been arrested for any crime specified in Section
7 290 of the Penal Code, or for violating Section 245 or 273.5,
8 subdivision (b) of Section 273a, of the Penal Code, or, prior to
9 January 1, 1994, paragraph (2) of Section 273a, of the Penal Code,
10 or for any crime for which the department is prohibited from
11 granting a criminal record exemption pursuant to subdivision (f),
12 prior to the department's completion of an investigation pursuant
13 to paragraph (1).

14 (3) The State Department of Social Services is authorized to
15 obtain any arrest or conviction records or reports from any law
16 enforcement agency as necessary to the performance of its duties
17 to inspect, license, and investigate community care facilities and
18 individuals associated with a community care facility.

19 (f) (1) After review of the record, the director may grant an
20 exemption from disqualification for a license or special permit as
21 specified in paragraphs (1) and (4) of subdivision (a), or for
22 employment, residence, or presence in a child day care facility as
23 specified in paragraphs (3), (4), and (5) of subdivision (c) if the
24 director has substantial and convincing evidence to support a
25 reasonable belief that the applicant and the person convicted of
26 the crime, if other than the applicant, are of good character so as
27 to justify issuance of the license or special permit or granting an
28 exemption for purposes of subdivision (c). However, an exemption
29 shall not be granted pursuant to this subdivision if the conviction
30 was for any of the following offenses:

31 (A) An offense specified in Section 220, 243.4, or 264.1,
32 subdivision (a) of Section 273a, or, prior to January 1, 1994,
33 paragraph (1) of Section 273a, Section 273d, 288, or 289,
34 subdivision (c) of Section 290, or Section 368, of the Penal Code,
35 or was a conviction of another crime against an individual specified
36 in subdivision (c) of Section 667.5 of the Penal Code.

37 (B) A felony offense specified in Section 729 of the Business
38 and Professions Code or Section 206 or 215, subdivision (a) of
39 Section 347, subdivision (b) of Section 417, or subdivision (a) or
40 (b) of Section 451 of the Penal Code.

1 ~~(2) The department shall not prohibit a person from being~~
2 ~~employed or having contact with clients in a facility on the basis~~
3 ~~of a denied criminal record exemption request or arrest information~~
4 ~~unless the department complies with the requirements of Section~~
5 ~~1596.8897.~~

6 ~~(g) Upon request of the licensee, who shall enclose a~~
7 ~~self-addressed stamped postcard for this purpose, the Department~~
8 ~~of Justice shall verify receipt of the fingerprint images.~~

9 ~~(h) (1) For the purposes of compliance with this section, the~~
10 ~~department may permit an individual to transfer a current criminal~~
11 ~~record clearance, as defined in subdivision (a), from one facility~~
12 ~~to another, as long as the criminal record clearance has been~~
13 ~~processed through a state licensing district office, and is being~~
14 ~~transferred to another facility licensed by a state licensing district~~
15 ~~office. The request shall be in writing to the department, and shall~~
16 ~~include a copy of the person's driver's license or valid~~
17 ~~identification card issued by the Department of Motor Vehicles,~~
18 ~~or a valid photo identification issued by another state or the United~~
19 ~~States government if the person is not a California resident. Upon~~
20 ~~request of the licensee, who shall enclose a self-addressed stamped~~
21 ~~envelope for this purpose, the department shall verify whether the~~
22 ~~individual has a clearance that can be transferred.~~

23 ~~(2) The State Department of Social Services shall hold criminal~~
24 ~~record clearances in its active files for a minimum of two years~~
25 ~~after an employee is no longer employed at a licensed facility in~~
26 ~~order for the criminal record clearances to be transferred.~~

27 ~~(3) The following shall apply to a criminal record clearance or~~
28 ~~exemption from the department or a county office with~~
29 ~~department-delegated licensing authority:~~

30 ~~(A) A county office with department-delegated licensing~~
31 ~~authority may accept a clearance or exemption from the~~
32 ~~department.~~

33 ~~(B) The department may accept a clearance or exemption from~~
34 ~~any county office with department-delegated licensing authority.~~

35 ~~(C) A county office with department-delegated licensing~~
36 ~~authority may accept a clearance or exemption from any other~~
37 ~~county office with department-delegated licensing authority.~~

38 ~~(4) With respect to notifications issued by the Department of~~
39 ~~Justice pursuant to Section 11105.2 of the Penal Code concerning~~
40 ~~an individual whose criminal record clearance was originally~~

1 processed by the department or a county office with
2 department-delegated licensing authority, all of the following shall
3 apply:

4 (A) The Department of Justice shall process a request from the
5 department or a county office with department-delegated licensing
6 authority to receive the notice, only if all of the following
7 conditions are met:

8 (i) The request shall be submitted to the Department of Justice
9 by the agency to be substituted to receive the notification.

10 (ii) The request shall be for the same applicant type as the type
11 for which the original clearance was obtained.

12 (iii) The request shall contain all prescribed data elements and
13 format protocols pursuant to a written agreement between the
14 department and the Department of Justice.

15 (B) (i) On or before January 7, 2005, the department shall notify
16 the Department of Justice of all county offices that have
17 department-delegated licensing authority.

18 (ii) The department shall notify the Department of Justice within
19 15 calendar days of the date on which a new county office receives
20 department-delegated licensing authority or a county's delegated
21 licensing authority is rescinded.

22 (C) The Department of Justice shall charge the department or
23 a county office with department-delegated licensing authority a
24 fee for each time a request to substitute the recipient agency is
25 received for purposes of this paragraph. This fee shall not exceed
26 the cost of providing the service.

27 (i) Notwithstanding any other law, the department may provide
28 an individual with a copy of his or her state or federal level criminal
29 offender record information search response as provided to that
30 department by the Department of Justice if the department has
31 denied a criminal background clearance based on this information
32 and the individual makes a written request to the department for
33 a copy specifying an address to which it is to be sent. The state or
34 federal level criminal offender record information search response
35 shall not be modified or altered from its form or content as provided
36 by the Department of Justice and shall be provided to the address
37 specified by the individual in his or her written request. The
38 department shall retain a copy of the individual's written request
39 and the response and date provided.

1 SEC. 4. Section 1596.871 of the Health and Safety Code is
2 amended to read:

3 1596.871. The Legislature recognizes the need to generate
4 timely and accurate positive fingerprint identification of applicants
5 as a condition of issuing licenses, permits, or certificates of
6 approval for persons to operate or provide direct care services in
7 a child care center or family child care home. It is the intent of the
8 Legislature in enacting this section to require the fingerprints of
9 those individuals whose contact with child day care facility clients
10 may pose a risk to the children's health and safety. An individual
11 shall be required to obtain either a criminal record clearance or a
12 criminal record exemption from the State Department of Social
13 Services before his or her initial presence in a child day care
14 facility.

15 (a) (1) Before *and, as applicable, subsequent to* issuing a license
16 or special permit to any person to operate or manage a day care
17 facility, the department shall secure from an appropriate law
18 enforcement agency a criminal record to determine whether the
19 applicant or any other person specified in subdivision (b) has ever
20 been convicted of a crime other than a minor traffic violation or
21 arrested for any crime specified in subdivision (c) of Section 290
22 of the Penal Code, *or for violating Section 245, 273ab, or 273.5,*
23 subdivision (b) of Section-273a 273a, or, prior to January 1, 1994,
24 paragraph (2) of Section-273a 273a, of the Penal Code, or for any
25 crime for which the department ~~cannot grant an exemption if the~~
26 ~~person was convicted and the person has not been exonerated is~~
27 *prohibited from granting a criminal record exemption pursuant*
28 *to subdivision (f).*

29 (2) The criminal history information shall include the full
30 criminal record, if any, of those persons, and subsequent arrest
31 information pursuant to Section 11105.2 of the Penal Code.

32 (3) Except during the 2003–04 to the 2014–15 fiscal years,
33 inclusive, neither the Department of Justice nor the department
34 may charge a fee for the fingerprinting of an applicant who will
35 serve six or fewer children or any family day care applicant for a
36 license, or for obtaining a criminal record of an applicant pursuant
37 to this section.

38 (4) The following shall apply to the criminal record information:

39 (A) If the State Department of Social Services finds that the
40 applicant or any other person specified in subdivision (b) has been

1 convicted of a crime, other than a minor traffic violation, the
2 application shall be denied, unless the director grants an exemption
3 pursuant to subdivision (f).

4 (B) If the State Department of Social Services finds that the
5 applicant, or any other person specified in subdivision (b), is
6 awaiting trial for a crime other than a minor traffic violation, the
7 State Department of Social Services may cease processing the
8 application *criminal record information* until the conclusion of
9 the trial.

10 (C) If no criminal record information has been recorded, the
11 Department of Justice shall provide the applicant and the State
12 Department of Social Services with a statement of that fact.

13 (D) If the State Department of Social Services finds after
14 licensure that the licensee, or any other person specified in
15 paragraph (2) of subdivision (b), has been convicted of a crime
16 other than a minor traffic violation, the license may be revoked,
17 unless the director grants an exemption pursuant to subdivision
18 (f).

19 (E) An applicant and any other person specified in subdivision
20 (b) shall submit fingerprint images and related information to the
21 Department of Justice and the Federal Bureau of Investigation,
22 through the Department of Justice, for a state and federal level
23 criminal offender record information search, in addition to the
24 search required by subdivision (a). If an applicant meets all other
25 conditions for licensure, except receipt of the Federal Bureau of
26 Investigation's criminal history information for the applicant and
27 persons listed in subdivision (b), the department may issue a license
28 if the applicant and each person described by subdivision (b) has
29 signed and submitted a statement that he or she has never been
30 convicted of a crime in the United States, other than a traffic
31 infraction as defined in paragraph (1) of subdivision (a) of Section
32 42001 of the Vehicle Code. If, after licensure, the department
33 determines that the licensee or person specified in subdivision (b)
34 has a criminal record, the license may be revoked pursuant to
35 Section 1596.885. The department may also suspend the license
36 pending an administrative hearing pursuant to Section 1596.886.

37 (b) (1) In addition to the applicant, this section shall be
38 applicable to ~~criminal convictions of~~ *record clearances and*
39 *exemptions* for the following persons:

1 (A) Adults responsible for administration or direct supervision
2 of staff.

3 (B) Any person, other than a child, residing in the facility.

4 (C) Any person who provides care and supervision to the
5 children.

6 (D) Any staff person, volunteer, or employee who has contact
7 with the children.

8 (i) A volunteer providing time-limited specialized services shall
9 be exempt from the requirements of this subdivision if this person
10 is directly supervised by the licensee or a facility employee with
11 a criminal record clearance or exemption, the volunteer spends no
12 more than 16 hours per week at the facility, and the volunteer is
13 not left alone with children in care.

14 (ii) A student enrolled or participating at an accredited
15 educational institution shall be exempt from the requirements of
16 this subdivision if the student is directly supervised by the licensee
17 or a facility employee with a criminal record clearance or
18 exemption, the facility has an agreement with the educational
19 institution concerning the placement of the student, the student
20 spends no more than 16 hours per week at the facility, and the
21 student is not left alone with children in care.

22 (iii) A volunteer who is a relative, legal guardian, or foster parent
23 of a client in the facility shall be exempt from the requirements of
24 this subdivision.

25 (iv) A contracted repair person retained by the facility, if not
26 left alone with children in care, shall be exempt from the
27 requirements of this subdivision.

28 (v) Any person similar to those described in this subdivision,
29 as defined by the department in regulations.

30 (E) If the applicant is a firm, partnership, association, or
31 corporation, the chief executive officer, other person serving in
32 like capacity, or a person designated by the chief executive officer
33 as responsible for the operation of the facility, as designated by
34 the applicant agency.

35 (F) If the applicant is a local educational agency, the president
36 of the governing board, the school district superintendent, or a
37 person designated to administer the operation of the facility, as
38 designated by the local educational agency.

39 (G) Additional officers of the governing body of the applicant,
40 or other persons with a financial interest in the applicant, as

1 determined necessary by the department by regulation. The criteria
2 used in the development of these regulations shall be based on the
3 person's capability to exercise substantial influence over the
4 operation of the facility.

5 (H) This section does not apply to employees of child care and
6 development programs under contract with the State Department
7 of Education who have completed a criminal record clearance as
8 part of an application to the Commission on Teacher Credentialing,
9 and who possess a current credential or permit issued by the
10 commission, including employees of child care and development
11 programs that serve both children subsidized under, and children
12 not subsidized under, a State Department of Education contract.
13 The Commission on Teacher Credentialing shall notify the
14 department upon revocation of a current credential or permit issued
15 to an employee of a child care and development program under
16 contract with the State Department of Education.

17 (I) This section does not apply to employees of a child care and
18 development program operated by a school district, county office
19 of education, or community college district under contract with
20 the State Department of Education who have completed a criminal
21 record clearance as a condition of employment. The school district,
22 county office of education, or community college district upon
23 receiving information that the status of an employee's criminal
24 record clearance has changed shall submit that information to the
25 department.

26 (2) Nothing in this subdivision shall prevent a licensee from
27 requiring a criminal record clearance of any individuals exempt
28 from the requirements under this subdivision.

29 (c) (1) (A) Subsequent to initial licensure, ~~any~~ a person
30 specified in subdivision (b) ~~and who is not exempted~~ exempt from
31 fingerprinting shall, ~~as a condition to obtain either a criminal~~
32 ~~record clearance or an exemption from disqualification, pursuant~~
33 ~~to subdivision (f), from the State Department of Social Services~~
34 ~~prior to employment, residence, or presence in a child day care~~
35 ~~facility initial presence in the facility.~~ A person specified in
36 subdivision (b) who is not exempt from fingerprinting shall be
37 fingerprinted and shall sign a declaration under penalty of perjury
38 regarding any prior criminal ~~conviction~~ convictions. The licensee
39 shall submit fingerprint images and related information to the
40 Department of Justice and the Federal Bureau of Investigation,

1 through the Department of Justice, or comply with paragraph (1)
2 of subdivision (h), prior to the person's employment, residence,
3 or initial presence in the child day care facility.

4 (B) These fingerprint images and related information shall be
5 electronically submitted to the Department of Justice in a manner
6 approved by the State Department of Social Services and the
7 Department of Justice for the purpose of obtaining a permanent
8 set of fingerprints. A licensee's failure to submit fingerprint images
9 and related information to the Department of Justice or to comply
10 with paragraph (1) of subdivision (h), as required in this section,
11 shall result in the citation of a deficiency, and an immediate
12 assessment of civil penalties in the amount of one hundred dollars
13 (\$100) per violation per day for a maximum of five days, unless
14 the violation is a second or subsequent violation within a 12-month
15 period in which case the civil penalties shall be in the amount of
16 one hundred dollars (\$100) per violation for a maximum of 30
17 days, and shall be grounds for disciplining the licensee pursuant
18 to Section 1596.885 or ~~Section~~ 1596.886. The State Department
19 of Social Services may assess civil penalties for repeated or
20 continued violations permitted by Sections 1596.99 and 1597.58.
21 The fingerprint images and related information shall then be
22 submitted to the department for processing. Within 14 calendar
23 days of the receipt of the fingerprint images, the Department of
24 Justice shall notify the State Department of Social Services of the
25 criminal record information, as provided in this subdivision. If no
26 criminal record information has been recorded, the Department of
27 Justice shall provide the licensee and the State Department of
28 Social Services with a statement of that fact within 14 calendar
29 days of receipt of the fingerprint images. If new fingerprint images
30 are required for processing, the Department of Justice shall, within
31 14 calendar days from the date of receipt of the fingerprint images,
32 notify the licensee that the fingerprints were illegible.

33 (C) Documentation of the individual's clearance or exemption
34 shall be maintained by the licensee, and shall be available for
35 inspection. When live-scan technology is operational, as defined
36 in Section 1522.04, the Department of Justice shall notify the
37 department, as required by that section, and notify the licensee by
38 mail within 14 days of electronic transmission of the fingerprints
39 to the Department of Justice, if the person has no criminal record.
40 Any violation of the regulations adopted pursuant to Section

1 1522.04 shall result in the citation of a deficiency and an immediate
2 assessment of civil penalties in the amount of one hundred dollars
3 (\$100) per violation per day for a maximum of five days, unless
4 the violation is a second or subsequent violation within a 12-month
5 period in which case the civil penalties shall be in the amount of
6 one hundred dollars (\$100) per violation for a maximum of 30
7 days, and shall be grounds for disciplining the licensee pursuant
8 to Section 1596.885 or ~~Section~~ 1596.886. The department may
9 assess civil penalties for repeated or continued violations, as
10 permitted by Sections 1596.99 and 1597.58.

11 (2) Except for persons specified in paragraph (2) of subdivision
12 (b), the licensee shall endeavor to ascertain the previous
13 employment history of persons required to be fingerprinted under
14 this subdivision. If it is determined by the department, on the basis
15 of fingerprints submitted to the Department of Justice, that the
16 person has been convicted of a sex offense against a minor, an
17 offense specified in Section 243.4, 273a, 273ab, 273d, 273g, or
18 368 of the Penal Code, or a felony, the State Department of Social
19 Services shall notify the licensee to act immediately to terminate
20 the person's employment, remove the person from the child day
21 care facility, or bar the person from entering the child day care
22 facility. The department may subsequently grant an exemption
23 pursuant to subdivision (f). If the conviction was for another crime
24 except a minor traffic violation, the licensee shall, upon notification
25 by the State Department of Social Services, act immediately to
26 either (1) terminate the person's employment, remove the person
27 from the child day care facility, or bar the person from entering
28 the child day care facility; or (2) seek an exemption pursuant to
29 subdivision (f). The department shall determine if the person shall
30 be allowed to remain in the facility until a decision on the
31 exemption is rendered. A licensee's failure to comply with the
32 department's prohibition of employment, contact with clients, or
33 presence in the facility as required by this paragraph shall result
34 in a citation of deficiency and an immediate assessment of civil
35 penalties by the department against the licensee, in the amount of
36 one hundred dollars (\$100) per violation per day for a maximum
37 of five days, unless the violation is a second or subsequent violation
38 within a 12-month period in which case the civil penalties shall
39 be in the amount of one hundred dollars (\$100) per violation for

1 a maximum of 30 days, and shall be grounds for disciplining the
2 licensee pursuant to Section 1596.885 or 1596.886.

3 (3) The department may issue an exemption on its own motion
4 pursuant to subdivision (f) if the person's criminal history indicates
5 that the person is of good character based on the age, seriousness,
6 and frequency of the conviction or convictions. The department,
7 in consultation with interested parties, shall develop regulations
8 to establish the criteria to grant an exemption pursuant to this
9 paragraph.

10 (4) Concurrently with notifying the licensee pursuant to
11 paragraph (3), the department shall notify the affected individual
12 of his or her right to seek an exemption pursuant to subdivision
13 (f). The individual may seek an exemption only if the licensee
14 terminates the person's employment or removes the person from
15 the facility after receiving notice from the department pursuant to
16 paragraph (3).

17 (d) (1) For purposes of this section or any other provision of
18 this chapter, a conviction means a plea or verdict of guilty or a
19 conviction following a plea of nolo contendere. Any action that
20 the department is permitted to take following the establishment of
21 a conviction may be taken when the time for appeal has elapsed,
22 when the judgment of conviction has been affirmed on appeal, or
23 when an order granting probation is made suspending the
24 imposition of sentence, notwithstanding a subsequent order
25 pursuant to Sections 1203.4 and 1203.4a of the Penal Code
26 permitting the person to withdraw his or her plea of guilty and to
27 enter a plea of not guilty, or setting aside the verdict of guilty, or
28 dismissing the accusation, information, or indictment. For purposes
29 of this section or any other provision of this chapter, the record of
30 a conviction, or a copy thereof certified by the clerk of the court
31 or by a judge of the court in which the conviction occurred, shall
32 be conclusive evidence of the conviction. For purposes of this
33 section or any other provision of this chapter, the arrest disposition
34 report certified by the Department of Justice, or documents
35 admissible in a criminal action pursuant to Section 969b of the
36 Penal Code, shall be prima facie evidence of conviction,
37 notwithstanding any other ~~provision~~ of law prohibiting the
38 admission of these documents in a civil or administrative action.

39 (2) For purposes of this section or any other provision of this
40 chapter, the department shall consider criminal convictions from

1 another state or federal court as if the criminal offense was
2 committed in this state.

3 (e) (1) The State Department of Social Services ~~may~~ *shall* not
4 use a record of arrest to deny, revoke, or terminate any application,
5 license, employment, or residence unless the department
6 investigates the incident and secures evidence, whether or not
7 related to the incident of arrest, that is admissible in an
8 administrative hearing to establish conduct by the person that may
9 pose a risk to the health and safety of any person who is or may
10 become a client. ~~The State Department of Social Services is~~
11 ~~authorized to obtain any arrest or conviction records or reports~~
12 ~~from any law enforcement agency as necessary to the performance~~
13 ~~of its duties to inspect, license, and investigate community care~~
14 ~~facilities and individuals associated with a community care facility.~~

15 (2) *The department shall not issue a criminal record clearance*
16 *to a person who has been arrested for any crime specified in*
17 *Section 290 of the Penal Code, or for violating Section 245, 273ab,*
18 *or 273.5, or subdivision (b) of Section 273a of the Penal Code, or,*
19 *prior to January 1, 1994, paragraph (2) of Section 273a of the*
20 *Penal Code, or for any crime for which the department is*
21 *prohibited from granting a criminal record exemption pursuant*
22 *to subdivision (f), prior to the department's completion of an*
23 *investigation pursuant to paragraph (1).*

24 (3) *The State Department of Social Services is authorized to*
25 *obtain any arrest or conviction records or reports from any law*
26 *enforcement agency as necessary to the performance of its duties*
27 *to inspect, license, and investigate community care facilities and*
28 *individuals associated with a community care facility.*

29 (f) (1) After review of the record, the director may grant an
30 exemption from disqualification for a license or special permit as
31 specified in paragraphs (1) and (4) of subdivision (a), or for
32 employment, residence, or presence in a child day care facility as
33 specified in paragraphs (3), (4), and (5) of subdivision (c) if the
34 director has substantial and convincing evidence to support a
35 reasonable belief that the applicant and the person convicted of
36 the crime, if other than the applicant, are of good character so as
37 to justify issuance of the license or special permit or granting an
38 exemption for purposes of subdivision (c). However, an exemption
39 ~~may~~ *shall* not be granted pursuant to this subdivision if the
40 conviction was for any of the following offenses:

1 (A) An offense specified in Section 220, 243.4, or 264.1,
2 subdivision (a) of Section ~~273a~~ 273a, or, prior to January 1, 1994,
3 paragraph (1) of Section 273a, Section 273ab, 273d, 288, or 289,
4 subdivision (c) of Section 290, or Section ~~368~~ 368, of the Penal
5 Code, or was a conviction of another crime against an individual
6 specified in subdivision (c) of Section 667.5 of the Penal Code.

7 (B) A felony offense specified in Section 729 of the Business
8 and Professions Code or Section 206 or 215, subdivision (a) of
9 Section 347, subdivision (b) of Section 417, or subdivision (a) or
10 (b) of Section 451 of the Penal Code.

11 (2) The department ~~may~~ *shall* not prohibit a person from being
12 employed or having contact with clients in a facility on the basis
13 of a denied criminal record exemption request or arrest information
14 unless the department complies with the requirements of Section
15 1596.8897.

16 (g) Upon request of the licensee, who shall enclose a
17 self-addressed stamped postcard for this purpose, the Department
18 of Justice shall verify receipt of the fingerprint images.

19 (h) (1) For the purposes of compliance with this section, the
20 department may permit an individual to transfer a current criminal
21 record clearance, as defined in subdivision (a), from one facility
22 to another, as long as the criminal record clearance has been
23 processed through a state licensing district office, and is being
24 transferred to another facility licensed by a state licensing district
25 office. The request shall be in writing to the department, and shall
26 include a copy of the person's driver's license or valid
27 identification card issued by the Department of Motor Vehicles,
28 or a valid photo identification issued by another state or the United
29 States government if the person is not a California resident. Upon
30 request of the licensee, who shall enclose a self-addressed stamped
31 envelope for this purpose, the department shall verify whether the
32 individual has a clearance that can be transferred.

33 (2) The State Department of Social Services shall hold criminal
34 record clearances in its active files for a minimum of two years
35 after an employee is no longer employed at a licensed facility in
36 order for the criminal record clearances to be transferred.

37 (3) The following shall apply to a criminal record clearance or
38 exemption from the department or a county office with
39 department-delegated licensing authority:

1 (A) A county office with department-delegated licensing
2 authority may accept a clearance or exemption from the
3 department.

4 (B) The department may accept a clearance or exemption from
5 any county office with department-delegated licensing authority.

6 (C) A county office with department-delegated licensing
7 authority may accept a clearance or exemption from any other
8 county office with department-delegated licensing authority.

9 (4) With respect to notifications issued by the Department of
10 Justice pursuant to Section 11105.2 of the Penal Code concerning
11 an individual whose criminal record clearance was originally
12 processed by the department or a county office with
13 department-delegated licensing authority, all of the following shall
14 apply:

15 (A) The Department of Justice shall process a request from the
16 department or a county office with department-delegated licensing
17 authority to receive the notice, only if all of the following
18 conditions are met:

19 (i) The request shall be submitted to the Department of Justice
20 by the agency to be substituted to receive the notification.

21 (ii) The request shall be for the same applicant type as the type
22 for which the original clearance was obtained.

23 (iii) The request shall contain all prescribed data elements and
24 format protocols pursuant to a written agreement between the
25 department and the Department of Justice.

26 (B) (i) On or before January 7, 2005, the department shall notify
27 the Department of Justice of all county offices that have
28 department-delegated licensing authority.

29 (ii) The department shall notify the Department of Justice within
30 15 calendar days of the date on which a new county office receives
31 department-delegated licensing authority or a county's delegated
32 licensing authority is rescinded.

33 (C) The Department of Justice shall charge the department or
34 a county office with department-delegated licensing authority a
35 fee for each time a request to substitute the recipient agency is
36 received for purposes of this paragraph. This fee shall not exceed
37 the cost of providing the service.

38 (i) Notwithstanding any other ~~provision of~~ law, the department
39 may provide an individual with a copy of his or her state or federal
40 level criminal offender record information search response as

1 provided to that department by the Department of Justice if the
2 department has denied a criminal background clearance based on
3 this information and the individual makes a written request to the
4 department for a copy specifying an address to which it is to be
5 sent. The state or federal level criminal offender record information
6 search response shall not be modified or altered from its form or
7 content as provided by the Department of Justice and shall be
8 provided to the address specified by the individual in his or her
9 written request. The department shall retain a copy of the
10 individual's written request and the response and date provided.